

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

The Department of Environmental Quality (DEQ) is responsible for regulating air quality, water quality, underground storage tanks, automobile wrecking facilities, hazardous waste facilities, solid waste management systems, mining operations, and for siting and needs analyses for large-scale energy facilities. In addition, the department is the lead agency for reclamation and cleanup activities related to the federal and state superfund programs, leaking underground storage tanks, and regulation and permitting of mining conducted on private, state, and federal lands. Department divisions, and fiscal and staffing resources, are shown below.

<u>Bureau/Division</u>	<u>Budget</u>		<u>Staff (FTEs)</u>	
	<u>FY 96</u>	<u>% of Total</u>	<u>FY 96</u>	<u>% of Total</u>
Director's Office	\$100,000	0.3	0	0
Central Services	1,752,000	5.6	28.0	7.6
Air Quality Division	3,550,000	11.4	58.0	15.8
Environmental Remediation Division	4,196,000	13.5	34.2	9.3
Water Quality Division	5,945,000	19.2	76.3	20.8
Petroleum Tank Release Compensation Board	1,347,000	4.3	24.3	6.6
Waste Management Division	3,567,000	11.5	46.8	12.8
Central Services - Natural Resources	612,000	2.0	11.5	3.1
Energy Division	1,952,000	6.3	33.0	9.0
Central Management Program - Reclamation	133,000	0.4	3.0	0.8
Reclamation Program	<u>7,867,000</u>	<u>25.4</u>	<u>51.4</u>	<u>14.0</u>
TOTAL	\$31,020,000	100.0	366.6	100.0

source: LFA, 1995

AIR QUALITY DIVISION

The Air Quality Division has two bureaus: 1) Air Quality and, 2) Occupational and Radiological Health. The Air Quality Bureau is responsible for maintaining outdoor air quality levels considered safe for the public's health and welfare through permit review, inspections, monitoring State Implementation Plan (SIP) development for areas not attaining ambient air quality standards, and the dissemination of information. The Occupational and Radiological Health Bureau is responsible for: 1) administering the Radiological Health Program, with primary emphasis on inspection of x-ray machines; 2) the regulation of asbestos consultants, contractors, and workers; and 3) the provision of measurement and technical expertise to evaluate indoor air in homes and work places.

The program summary analyzes the outdoor air quality compliance and enforcement components of the division.

*A copy of this table is not available electronically.
For a paper copy, please contact the EQC Office.*

source: LFA, 1996.

Air Quality Program

The Air Quality Program implements National Clean Air Act regulations and is responsible for administering the Clean Air Act of Montana. Specifically, the program is responsible for maintaining ambient (outdoor) air quality levels for the public's health through permit review, inspections, monitoring, and information dissemination.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Air Quality Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II, Sec. 3** "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment..."
- **Montana Clean Air Act** (MCA 75-2-101, et. seq.) makes it public policy to protect Montana's air quality.
- **Asbestos Control Act** (MCA 75-2-501, et. seq.)
- **Nuclear Radiation** (MCA 75-3-101, et. seq.)
- **Occupational Health Act** (MCA 50-7-101, et seq.)

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)

Related federal authorities:

- **National Clean Air Act (42 U.S.C. 7401, et. seq.)**
- **National Environmental Policy Act (NEPA)**

Air quality administrative rules:

- ARM 16.8.101 et. seq.

Specific enforcement authority:

- MCA 75-2-401, 412, 413, and 514
- ARM 16.8.201, 202

Primacy/jurisdictional agreements:

- State program approval and primacy from the federal Environmental Protection Agency
- Enforcement authority for minor sources has been delegated to 3 counties through annual contracts and funding.

2. Program Goals. The Air Quality Program goal is to ensure compliance with the air quality laws and to administer the program through a systematic and predictable process that not only provides protection to the citizens of Montana and their environment but also serves to deter individuals from violating those same laws and rules.

3. Program Activities. The Compliance and Enforcement Section of the program has ten positions dedicated to the air quality compliance/enforcement functions. Approximately 10-15% of their duties are specifically related to enforcement. However, the entire staff of the Air Quality Program has limited duties related to compliance and enforcement. Historically, this program processes approximately 75 new source or construction air quality permits and 100 burning permits per year.

Program resources and demands are described in more detail below. Please note, given the reorganization transition that is taking place, the numbers depicted below are approximations.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Permits/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Permitting	\$773,360	16	4.4 years	320	NA	unkwn
Enforcement	\$483,350	10	5 years	10 active cases	NA	unkwn
Other ¹	\$2,293,787	32	unkwn	NA	NA	NA
TOTAL	\$3,550,497	58	>5yrs	-	NA	unkwn

source: Booher & Sensibaugh, 1996.

¹ Other includes planning staff, monitoring staff, administrative staff, occupational and radiological health staff and program, equipment, etc. These positions support the permitting and enforcement activities.

Fees and Charges. Air Quality Program revenues from fees and charges are described below. Air Quality operation fees are collected annually from each permittee based on tonnage emitted. The Board of Environmental Review may order the assessment of additional air quality operation fees to fund specific activities of the department directed at a particular geographic area. Air quality permit application fees are based on the estimated amount of air pollutants to be emitted annually from the source of air contaminants.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fee:	variable	\$25,000	¹
Operation Fees:	variable	\$1,500,000	¹
Additional MEPA Fees	none	none	not applicable
Noncompliance Penalties:	variable	\$300,000	General Fund
TOTAL:	NA	\$1,645,437	

source: Booher & Sensibaugh, 1996

¹ Concurrent with the submittal of a permit application and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

© emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

4. Regulated Communities. Administrative rules require most emission sources to apply for air quality permits prior to construction, alteration, installation, or use of any air contaminant source or stack. Those entities that are regulated are illustrated below.

The Regulated Community				
Type of Industry	Major ¹	Synthetic Minor ²	Minor ³	Total
Oil and Gas	29	2	50	81
Mineral Processing	65	2	52	119
Wood Products	37	1	2	40
Agricultural	13	1	2	16
Mining	29	0	3	32
Power Generation	6	0	3	9
Misc.	52	3	27	82
Total	283	9	139	431

¹ "Major" sources are generally those sources that emit greater than 100 tons of air pollution per year.

² "Synthetic Minor" are those sources that could emit more than 100 tons of air pollution per year but are controlled to emit less than 100 tons of air pollution.

³ "Minor" sources of air pollution are all other sources that are not major or synthetic minor.

5. Philosophical Approach to Compliance. The program's philosophical approach is to maintain compliance. Program efforts are cooperative with the regulated industry. Compliance assistance is the top priority. When cooperation is no longer effective in maintaining compliance, the program will use its enforcement authority.

6. Compliance Tools Available and Used. The program provides compliance assistance to the regulated community and ensures compliance through inspections and enforcement actions. The Air Quality Program is unique in that it is required to establish a small business stationary source technical and environmental compliance assistance program pursuant to the federal Clean Air Act. The small business compliance assistance program must:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

- (c) provide small business stationary sources timely notice of their rights and obligations under this chapter;
- (d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and
- (e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

The table on the following pages illustrates the compliance tools available and used by the Air Quality Program.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AIR QUALITY

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Info/T.A.:			
Presentations	When requested.	Program Staff	unknown
Informal Discussions	When dealing with regulated community and general public.	Program Staff	unknown
On-Site Technical Assistance	When dealing with regulated facilities.	Program Staff	unknown
Small Business Compliance Assistance Program Education Efforts:			
General Assistance	The small business assistance program proactively provides general assistance through the use of a 1-800 phone number, referrals, and solicitation.	Small Business Representative	1044
On Site Visits	Upon request or referrals.	Small Business Representative	78
Seminars	When a new law is enacted or rule is promulgated, the small business representative organizes a training program. The small business representative also participates in seminars provided by other entities.	Small Business Representative	54
Information Packets	Upon request.	Small Business Representative	29
Comprehensive Planning/Withdrawals:	Not authorized.	Not applicable	Not applicable

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AIR QUALITY

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certifications/Bonds:			
Permits:	Sources that emit greater than 25 tons of air pollution with certain exclusions are required to obtain a permit.	Program staff	120
Monitoring/Inspections:	Inspections are scheduled annually. Inspections are also triggered by complaints.	Program staff	110
Administrative Notices/Orders:			
Warning letter/ Letter of Resolution (LOR)	Warning letters and LOR's are used to notify a facility or individual of a violation or to resolve a violation after an official notice (NOV) has been sent. They are used for de minimis violations or those that do not proceed to "formal" enforcement action.	Issued by staff	55
Citation/Notice of Violation (NOV)	NOV's are issued when a noncompliance situation has the potential for proceeding to "formal" enforcement action. It is an official notice that the department believes that a violation of an applicable requirement has occurred or is occurring. It allows the alleged violator an opportunity to meet with representatives of the department and discuss the violation(s). The NOV is a prerequisite for Administrative resolutions. Citations are no longer used by the AQD and have been replaced by NOV's	NOV's are issued by staff.	73

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AIR QUALITY

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Release of Liability	Release of Liability is a form of administrative resolution to a violation. When a violation has a small associated penalty (i.e. less than \$7,000), the litigation risk is low and the violator has been cooperative and agrees with the resolution, a release is considered. The violator pays the proposed penalty and the department issues a release of liability signed by the director. The use of releases is new to the AQD.	Issued by management or legal staff and signed by director	2
Administrative Order	An Administrative Order is a legal document which contains orders from the department for resolving violations and can contain a penalty. The document is presented as a proposal and is negotiable. The final form is appealable to the Board of Environmental Review. The use of Administrative Orders is dependent upon the cooperativeness of the violator, a one year statute of limitations from the date of the violation and a penalty cap of \$80,000. Administrative penalty authority was granted to the AQD by the 1993 Legislature.	Drafted by management with legal staff oversight, issued by management and signed by director.	4 No board appeals
Administrative Penalties\Sanctions: Penalties:	A penalty may be assessed if a statutory provision, an administrative rule, or a permit condition or limitation is violated and the facts alleged to constitute a violation. An administrative civil penalty of not more than \$10,000 for each day of each violation, not to exceed a total of \$80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment. Administrative penalties collected must be deposited in the state general fund.	Drafted by management with legal staff oversight, issued by management and signed by director.	4 ¹

STATE COMPLIANCE/ENFORCEMENT TOOLS -- AIR QUALITY			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action:	A civil judicial action is taken when a violator has been uncooperative, or litigation risk is high or the penalty is calculated higher than \$80,000.	Issued by legal staff. Approved by the Director.	5
Criminal Judicial Action:	<p>Criminal judicial action is invoked if a person is guilty of an offense if that person knowingly:</p> <p>(1) violates a provision of statute or a rule, order, or permit made or issued;</p> <p>(2) makes a false material statement, representation, or certification on a required form or in a notice or report required by a permit; or</p> <p>(3) renders inaccurate a required monitoring device or method.</p> <p>A person guilty of an offense is subject to a fine of not more than \$10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation. Fines collected under this section, except fines collected by an approved local air pollution control program, must be deposited in the state general fund.</p>	District Court	none

¹ The four administrative penalties assessed in 1995 were attached to administrative orders.

source: Booher, 1996.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with air quality statutes and rules are the small business compliance assistance program, periodic inspections and self submitted compliance reports, stack testing, ambient monitoring, and citizen complaints.

8. History of Compliance. The Air Quality Program provided the following narrative on its compliance history between July 1994 and February 1996. The program was unable to provide any information on compliance history for actions taken prior to July 1994. In the period between July 1994 and February 1996:

- 73 total citations/Notice of Violations (NOVs) were issued by the AQD
- 22 were issued to asphalt plants and crushers for violations of federal testing regulations--all of them were resolved through compliance assistance and warning letters.
- 17 were issued to violators of the open burning regulations - most of these were resolved through warning letters - some of them are recent and have yet to be officially resolved
- 26 were issued to 15 Major Stationary Sources (those that emit more than 100 tons per year) - some of these were duplicates, issued for different violations or duplicated because an NOV was issued to replace a citation. 10 citations/NOVs representing 7 facilities have been resolved. 16 citations/NOVs representing 8 facilities are ongoing.
- 8 citations/NOVs representing 6 minor facilities (those emitting less than 100 tons per year) were issued - 6 of those violations have been resolved - 2 are ongoing.

The 22 asphalt plant/crusher NOV's and the resolution to those was a special compliance assistance effort and is also not included on this list.

source: Booher, 1996.

9. "Violations."

The FY 95 list of air quality violations (both issued and pending) is shown below.

<u>1995 Air Quality Violations, by Type and Status</u>					
<u>Month Issued</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant¹ Violation?</u>
October	Major	Failure to obtain a permit.	\$5,000	resolved	yes
October	Major	Failure to obtain a permit	\$9,955 ²	resolved	yes
October	Major	and failure to conduct compl. testing			
October	Major	Failure to obtain a permit	\$29,388 ³	resolved	yes
October	Major	and failure to conduct compl. testing			
October	Major	Opacity violation	\$8,500	resolved	yes
November	Major	Violated consent decree	\$1,250	resolved	yes
March	Major	Failure to conduct testing	\$1,178	resolved	yes
March	Major	Emission violation	\$10,000	resolved	yes
May	Major	Opacity violation	\$10,000	resolved	yes
July	Major	Failure to obtain permits	\$79,000	resolved	yes
July	Major	Emissions and opacity	\$425,000	resolved	yes

¹ A significant violation in generic terms is one in which a major source of air pollution (a source that emits greater than 100 tons of air pollution per year) violates a federally enforceable regulation.

² In addition to the penalty, a supplementary environmental project valued at \$110,000 was imposed through an administrative order.

³ In addition to the penalty, a supplementary environmental project valued at \$110,000 was imposed through an administrative order.

source: Booher, 1996.

Discovery of Violations. Most violations in the Air Quality Program are discovered through inspection and investigation as shown below.

Violations Discovered, by method, 1995					
<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violations</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Major	15	11	7	7	—
Minor	7	1	—	2	6

The above table does not include open burning violations which were all discovered through complaints.

source: Booher, 1996.

10. Considerations in Calculating Penalties. The Air Quality Program uses a detailed "point" system outlined in its cooperative enforcement agreement with the EPA to assess penalties. Generally, points are assigned based on history, seriousness, negligence, and good faith, as described below.

11. Resolution of Noncompliances. According to program staff, 95% of the total violations are resolved informally through site visitation and consultation, warning letters, etc. Program staff were unable to provide a figure for total violations over time given that most violations are informally resolved. There are 10 current formal enforcement cases that the program is pursuing at this time. Four are being resolved administratively. Two are being resolved through civil/judicial actions. And for 4 cases the method of resolution has not yet been determined.

12. Current Compliance Priorities. Compliance priorities were not provided.

13. Compliance Relationships with Other Agencies.

Oversight. Not applicable.

Partnerships. The Air Quality Program cooperates on an informal basis with other state agencies concerning enforcement issues. The Air Quality Program has a formal enforcement agreement with the EPA. This agreement establishes procedures and time lines for conducting enforcement actions.

Delegated Authority. The state Air Quality Program delegates some of its authority for nonmajor sources to local governmental entities.

ENERGY DIVISION

The Energy Division consists of an administration unit and three bureaus: 1) the Facility Siting Bureau, which does research, performs environmental impact and assessment studies, and analyzes energy projects under either MFSA or MEPA; 2) the Planning and Analysis Bureau, which identifies and evaluates energy issues affecting Montana and formulates recommendations for Montana officials; and 3) the Conservation and Renewable Energy Bureau, which works to encourage energy conservation and reduce the state's dependence on fossil fuels through the promotion of competitively-priced renewable resources.

*A copy of this table is not available electronically.
For a paper copy, please contact the EQC Office.*

source: LFA, 1995.

Legislative History

Events important to the compliance/enforcement elements of the Energy Program are summarized below.

Montana Utility Siting Act

1973 The Montana Utility Siting Act of 1973 was enacted by the 42nd Legislature to ensure that the location, construction, and operation of power and energy generating and conversion facilities would produce minimal adverse effects on the environment and the citizens of Montana.

The Act covered certain facilities that generated electricity, produced gas or liquid hydrocarbon products, or that enriched uranium minerals. It also covered electric transmission lines of a defined capacity and length, along with their associated facilities.

The Act required an application for the proposed facility; a filing fee; a study, evaluation, and report; a public hearing process; and certification from the Board of Natural Resources and Conservation (BNRC) prior to construction. It also required the annual filing of a long-range plan that included a list of planned facilities.

- 1974 The 43rd Legislature amended the Utility Siting Act to include provisions for facilities for the development and use of geothermal energy.

Montana Major Facility Siting Act

- 1975 The 44th Legislature changed the name of the Utility Siting Act to the Montana Major Facility Siting Act and made a number of comprehensive changes. It expanded the Act's coverage to include:
- facilities producing synthetic fuels; facility additions costing more than \$250,000; smaller electrical production facilities, and facilities which could utilize, refine, or convert 500,000 tons or more of coal or more per year;
 - added the consideration of "public interest, convenience, and necessity;"
 - allowed a waiver of certification proceedings if an immediate, urgent need for a facility exists;
 - added provisions stating when the BNRC may revoke or suspend a certificate; and
 - placed the burden of proof on the applicant during the hearing.
- 1977 The 45th Legislature enacted a provision offering a reduction in the statutory filing fee upon timely submission of a notice of intent to file an application.
- 1978 An initiative passed in 1978 amended the Act to require the BNRC to find that a number of conditions are met before a nuclear power plant may be certified. The voters of the state must then approve the facility either by referendum or initiative.
- 1979 The 46th Legislature amended a number of substantive and procedural sections of the Act to clarify the schedule the state must follow in evaluating and reaching a decision on applications. Particular attention was given to the jurisdictions of the Department of Natural Resources (DNRC) and the Department of Health (DHES). Among other modifications, the Legislature:
- required applicants to file a joint application with both departments;
 - allowed the BNRC and BHES hearings to be combined at the applicant's request;
 - assigned specific time limitations to most phases of the hearing process;
 - declared the BHES decision on air and water quality conclusive, but retained BNRC's authority to determine that a site represents the minimum adverse environmental impact;
 - allowed conditional air and water quality permits to be issued, and primary and alternative sites to be certified by the BHES or DHES;
 - established time limits for the commencement of construction on transmission lines and pipelines;
 - exempted crude oil and natural gas refineries and associated facilities from the Act;
 - directed use of public lands whenever such use is as economically practicable as the use of private lands and meets environmental criteria specified by the Act.
- 1981 The 47th Legislature also amended the Act. Along with other minor changes, the Legislature:
- allowed the BNRC to waive the alternative site studies in counties that have experienced severe unemployment problems;
 - enabled the BNRC to adopt rules that may exempt, in certain instances, facilities engaged in innovative energy technologies.
- 1983 The 48th Legislature amended the Siting Act to delete the provision exempting federal facilities from its coverage and inserted language that states the Act applies to federal facilities to the fullest extent allowed by federal law.
- 1985 The 49th Legislature amended the Siting Act to:
- extend coverage to natural gas or crude oil pipelines of more than 17 inches in diameter;
 - allow the BNRC to condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources;
 - require that a plan for monitoring construction of certified facilities be included in the certificate;
 - exempt electric transmission lines of 230 KV or less from the requirement that they be identified in a long-range plan at least two years prior to acceptance of an application by the DNRC;
 - set new time limits for when construction on a facility must begin after a certificate has been issued;
 - change the date for filing long-range plans, change the amount of filing fee paid for processing applications, allow the DNRC to collect reasonable costs for processing a proposal for an exempt facility, and provide for hearings on the revocation or suspension of certificates.

- 1987 The 50th Legislature made several changes to the Siting Act:
- Facilities certified under the Act were exempted from certain provisions of the dam safety law.
 - A 60 day decision-making time was added to the BNRC determination on a centerline for linear facilities after the start of the non-contested case hearing.
 - The kilovolt threshold for defining a transmission line for coverage was amended to exclude transmission lines larger than 69-kV and up to and including 115-kV from the Act if certain conditions were met, including right-of-way agreements or options from 75% of the owners who collectively own more than 75% of the property along the centerline; provide certain public notification requirements for project owners be supplied to the DNRC and for owners to submit verification within 36 months of the notice to the DNRC that provision had been met to exclude the project from coverage.
 - Eliminated baseline study requirements in applications for energy generation and conversion facilities except at the applicants option; clarifying board rule-making authority; and made minor wording changes.
- 1989 No changes to the Siting Act were made during the 51st Legislature.
- 1991 No substantive changes to provisions of the Siting Act were made during the 52nd Legislature.
- 1993 The 53rd Legislature passed the Montana Integrated Least-Cost Resource Planning and Acquisition Act which integrated the Least-Cost Resource Planning under the Public Service Commission (PSC) into the Siting Act by providing the DNRC with a planning function. The changes provide for the DNRC review and comment on integrated resource plans or their equivalent submitted to the PSC.
- 1995 The 54th Legislature reorganized several state agencies, giving responsibility for the Siting Act to the new Department of Environmental Quality (DEQ). It also generally revised the Act by providing a two year change in the coverage of the Act for certain electric generating facilities, requiring DEQ to submit proposed legislation for modernizing and updating the law, and reducing time-frames for Board of Environmental Review (BER) decisions. Except for hydroelectric power generation facilities, the changes raised the trigger for coverage from generating 50 MW to generating 150 MW or more of electricity. These changes will terminate on June 30, 1997 unless extended by the Legislature. The changes would apply to all projects who have filed completed applications for applicable air and water quality permits between May 1, 1995 and June 30, 1997; have filed applications during this period and received approval by October 1, 1997; or have commenced to construct or upgrade a power plant designed for or capable of generating less than 150 MW. The DEQ must submit to the 1997 Legislature a report with recommendations for improving and modernizing the Act based on a consensus building process involving a broad range of affected interest groups. Decision-making time for the BER was reduced from 9 months to 8 months with reduction in times given for action by the hearing examiner under section 75-20-220 MCA.

Energy Program

The Major Facility Siting Act, 75-20-101 et. seq, MCA requires that the Facility Siting Bureau within the Energy Program review the location, construction and operation of large energy generation plants and transmission facilities.

1. Constitutional and Statutory Goals. The following provides a general guide to the constitutional, statutory, federal, and rule for the activities of the Energy Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II, Sec. 3, Inalienable Rights** - conveys the right of every Montanan to a clean and healthful environment.
- **Montana Constitution, Art. II, Sec. 8, Right of Participation** - states that the public has a right to expect governmental agencies to provide reasonable opportunities for citizen participation in the operation of the agencies.
- **Montana Constitution, Art. IX, Sec. 1, Protection and improvement of the environment and natural resources** - subpart (1), requires the state to maintain and improve a clean and healthful environment in Montana for present and future generations. Subpart (3) requires the legislature to protect environmental life support system from degradation and provide remedies to prevent unreasonable depletion and degradation of natural resources.

- **Montana Major Facility Siting Act** (75-20-101 et seq., MCA) provides for state review of the location, construction, and operation of large energy generation plants and transmission facilities. 75-20-102(1) repeats and affirms the constitutionally declared policy of the state to maintain and improve a clean and healthful environment, and to provide for administration and enforcement to attain these objectives.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)

Related federal authorities: None

Energy administrative rules:

- ARM 36.7.901 - 5004

Specific enforcement authority:

- 75-20-408, MCA

Primacy and jurisdictional agreements:

2. Program Goals. Based upon the above-referenced guidance, the Energy Program has identified the following program goals:

1. To administer the Major Facility Siting Act (MFSA), which regulates the location, construction, and operation of large scale energy facilities.
2. To adopt or revise MFSA rules, provide pre-application consultation to prospective facility sponsors, and, within established statutory time frames, evaluate and process applications for certificates of environmental compatibility and public need.
3. To serve as principal environmental assessment team for the Department and when requested, assist other Montana state government agencies in complying with the Montana Environmental Policy Act (MEPA) and other state statutes.
4. To prepare legally complete environmental analyses and impact statements for other divisions and agencies pursuant to MEPA and other state statutes such as the Strip and Underground Mine Reclamation Act, the Hardrock Reclamation Act, and the Water Use Act, within contractual and statutory time frames.
5. To coordinate and streamline joint state/federal review and decision-making on MFSA and MEPA projects through existing Memoranda of Understanding.
6. To form state/federal interagency teams and prepare joint environmental impact statements on MFSA projects proposed on federal lands or federal projects requiring substantive compliance with MFSA.

3. Program Activities. The MFSA/MEPA program in the Energy Division is described in the following table.

<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg Staff Exp</u>	<u>95 Ongoing Projects</u>	<u>Avg Acres/project</u>	<u>New Proj/yr</u>
\$564,920	11 auth. 7 actual	10 years	7	340	5

The Energy Division is authorized 5 current level positions, 3 modified positions and 3 aggregate positions to carry out MFSA and MEPA permitting, compliance and enforcement activities. The modified and aggregate positions depend on fees for funding; therefore, they are only filled when there is sufficient project revenue and work. Aggregate positions allow the Energy Division to expand as necessary to respond in a timely manner to applications. The actual staff level currently is 7 FTE.

Fees and Charges. Energy Program revenues from fees and charges are described below. The fee structure is established at 75-20-215. The fee formula is used as a statutory cap. The project sponsor is only billed for actual expenses. The DEQ usually enters into a fee agreement with applicants on the basis of estimated project costs.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Filing Fee	% of Project Cost ¹	\$349,800	development of studies/baseline data, writing

¹ The fee may not exceed the following scale based upon the estimated cost of the facility:

1. 4% of any estimated cost up to \$1 million; plus
2. 1% of any estimated cost over \$1 million and up to \$20 million; plus
3. 0.5% of any estimated cost over \$20 million and up to \$100 million; plus
4. 0.25% of any amount of estimated cost over \$100 million and up to \$300 million and up to \$1 billion; plus
5. 0.05% of any amount of estimated cost over \$1 billion

It is estimated that project fees will amount to \$349,805 in FY 96. The fees are used to accomplish studies and prepare environmental documents in support of the certification process.

4. Regulated Communities. Consistent with the activities noted above, the Energy Program interacts with project sponsors. Project sponsors include public, investor-owned utilities, federal power marketing agencies, independent, private power producers, and rural electric cooperatives. Industry representatives who are contemplating a proposed facility contact the DEQ to describe their concept and obtain information on the permitting process they can anticipate. It is the regulated community's responsibility to initiate contact with the department.

5. Philosophical Approach to Compliance. The Major Facility Siting Act tends to front-end load a host of preapplication activities. The early beginning of a working dialogue between the department and the project sponsor tends to encourage compliance. Early and meaningful public participation tends to provide advanced notice of potential problems in proposals, and provides the agencies and the project sponsor an opportunity to address public concerns.

6. Compliance Tools Available and Used. The menu of tools used by the Energy Program to achieve their natural resource/environmental mandates is shown below.

The Major Facility Siting Act program relies on the following compliance tools:

- Detailed, published rules describing the types of facilities covered and the specific information required in applications
- Pre-application consultation between the DEQ and prospective applicants to clarify and tailor application requirements
- Interagency agreements, contracts, and memoranda of understanding to provide cooperative data gathering to meet the regulatory needs of all agencies with jurisdiction applicable to the proposed project.
- Reviews to determine completeness of preliminary draft applications
- Meetings between an interagency team and the applicant to clarify deficiencies in the draft application
- Formal review of final applications and preparation of a letter to notify applicants of additional information needs
- Development of formal recommendations and proposed mitigation measures that the Board may include, or conditions when approving the proposed project
- Cooperative development with the applicant of environmental specifications for each project
- Contested case certification hearings before the Board of Environmental Review
- Performance bonds by the certificate holder to ensure post construction clean up and restoration, and longer term revegetation and weed control
- Board approved construction monitoring programs; DEQ identification of problematic practices in the field and in writing; follow up field inspection
- DEQ revegetation/reclamation monitoring; bond release when published revegetation/reclamation criteria are met
- Rarely, convening of technical working group to address long term mitigation of unanticipated impacts (see Table C)
- DEQ involvement in operational monitoring programs for compliance with certificate conditions that may include: self monitoring and reporting by certificate holder, review and approval of annual monitoring reports by DEQ, and identification of efforts or measures by DEQ to maintain compliance or prevent or avoid situations of noncompliance with certificate conditions. These efforts or measures may include: modification of operations, replacement of equipment, or remediation of identified problems.
- DEQ review and approval of certified facility de-commissioning plans or practices.

The DEQ staff monitors industry developments to ensure that projects requiring review are brought before it. Staff review of application materials identifies additional information requirements. When necessary the DEQ participates in contested case certification hearings either as an active party or as staff to the board. The staff ensures that the project's environmental documentation satisfies legal requirements and works with the applicant to ensure that the board's project-specific version of the board's environmental specifications are incorporated into construction documents. Finally, DEQ staff members monitor or supervise the monitoring of project construction. They ensure that the board's mitigation requirements are complied with, and provide feedback to the board and DEQ management on the effectiveness of mitigation measures.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- ENERGY PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: Informal Contacts/Consultation	Upon request of potential project sponsor.	Program Staff	unknown
Comprehensive Planning/Withdrawals	Not Authorized	Not Applicable	Not Applicable
Permits/Certifications/Bonds: Pre-application consultation Completeness Review of preliminary draft application Formal Draft completeness review Formal recommendations & proposed mitigation Bonding Certificate Revocations	Project sponsor approaches program staff to discuss process. Preliminary review of draft applications occurs upon submittal. Formal review of draft application occurs upon submittal by project sponsor. Program staff have 90 days to review. Upon completion of final environmental review program staff makes recommendations. Performance bonds by the certificate holder to ensure post construction clean up and restoration, and long term revegetation and weed control. Performance bond required prior to certification. Predicted environmental impacts = level of bonding. A certificate may be revoked or suspended by the board: (1) for any material false statement in the application or in accompanying statements or studies required of the applicant if a true statement would have warranted the board's refusal to grant a certificate; (2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or (3) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.	Program Staff Program Staff Program Staff Program Staff Program Staff BER	12 4 4 4 4 none
Monitoring/Inspections: Construction Monitoring Program Full-Site Inspections	Board of Environmental Review approves a construction monitoring program. Trigger upon commencement of project construction. Program staff conducts inspections of those identified environmentally sensitive areas that the project impacts.	Board Program Staff	4 2

STATE COMPLIANCE/ENFORCEMENT TOOLS -- ENERGY PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders:	N.A.	N.A.	N.A.
Admin. Penalties/Sanctions:	N.A.	N.A.	N.A.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- ENERGY PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Civil Judicial Action:</p> <p>Agency Initiated</p> <p>State Resident Action</p> <p>Action to recover for damage to water supply</p>	<p>If a project sponsor commences construction without obtaining a certificate or constructs, operates, or maintains a facility in violation of certification, or violates any rule or statutory provision of the Major Facility Siting Act or knowingly submits false information in any report, 10 year plan, or application. The project sponsor could be liable for a civil penalty of not more than \$10,000 for each violation. Each day of a continuing violation constitutes a separate offense.</p> <p>A resident of this state with knowledge that a requirement or a rule is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury. If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the County of Lewis and Clark. If the court finds that a requirement or a rule is not being enforced, the court may order the public officer or employee whose duty it is to enforce the requirement or rule to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.</p> <p>An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to recover damages for contamination, diminution, or interruption of the water supply proximately resulting from the operation of a facility. The remedies enumerated in this section do not exclude the use of any other remedy which may be available under the laws of the state.</p>	<p>Attorney General</p> <p>District Court</p> <p>District Court</p>	<p>none</p> <p>none</p> <p>none</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- ENERGY PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Criminal Judicial Action:	Not Authorized	Not Applicable	Not Applicable

7. Incentives for Compliance. The Siting Act's administrative rules provide very specific directives for content of applications and documentation of environmental and economic information. These requirements are reviewed and modified on a project-specific basis through preapplication consultation between the DEQ and the applicant. This process ensures that applications are as complete as possible on initial submittal. Deficiencies identified by the DEQ are corrected by the applicant.

The Siting Act statute and rules include specific decision criteria that govern the considerations and findings of the Board of Environmental Review. The decision criteria provide, in advance, a published yardstick by which the effects of the project will be weighed and mitigated.

When the Board of Environmental Review provides a Certificate of Environmental Compatibility and Public Need to an applicant, the certification requires specific mitigation measures which must be complied with during facility construction. Applicants are required to fund a construction monitoring program with two objectives. First, the program ensures that specific mitigation requirements identified through the EIS process are subsequently complied with by the project's owners or contractors through construction and operation of a facility. Second, the monitoring program is designed to provide feedback to the DEQ and the board on the effectiveness and appropriateness of the board's required mitigation.

Much of the MEPA work done by the Energy Program involves the voluntary compliance by energy project sponsors who prefer a coordinated permitting process to a piecemeal approach where individual programs prepare separate MEPA compliance documents. Guidance and direction for the analysis is contained in the MEPA statute and implementing rules. One goal of Energy's MEPA compliance program is to determine measures available and necessary for regulatory compliance.

8. History of Compliance. Twice in the last few years, the Energy Program has learned through the media or other sources that facilities were planned that, apparently unbeknownst to the project sponsor, required Siting Act review. In both instances, the program was able to bring the sponsors to the table to initiate timely review.

9. Violations. The Facility Siting program has never encountered a situation where the contractor and the certificate holder have not corrected a problem in a timely fashion. If noncompliance could not be corrected through a cooperative approach, a written order would be prepared in consultation with department management. The order would identify the specific noncompliance and direct corrective action. If the department order was not effective in correcting the noncompliance, the penalties in 75-20-408, MCA could be invoked.

No formal enforcement actions have ever been necessary. The program's past response to minor noncompliance activities has been tempered by the cooperative and productive working relationship that has existed between the program and the certificate holder. Were the program to be faced with a recalcitrant project sponsor, agency actions would have to reflect that lack of cooperation, and a more formal and vigorous response would be necessary.

The CY 95 list of Energy noncompliances is shown below.

<u>1995 Energy NONs, by Type and Status</u>					
<u>Month NON Issued</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u>
None	NA	NA	NA	NA	NA

Discovery of Violations. The two violations noted by the Energy Program were discovered through inspections

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Project Sponsors	2	NA	NA	2	NA

10. Considerations in Calculating Penalties. The Energy Program does not have a formal process for calculating penalties. The program has not assessed a penalty. A civil penalty of not more than \$10,000 for each violation of the MFSA can be assessed by a Court.

11. Resolution of Noncompliances. The two violations discovered through inspections have been resolved informally.

12. Current Compliance Priorities. Agency staff have identified the following short-term priorities for the Energy program:

1. Timely federal participation in joint review of projects.
2. Facilitation of the regulatory reform group analyzing the Major Facility Siting Act.

13. Compliance Relationships with Other Agencies.

Oversight. Not applicable.

Partnerships. The program has a standing memorandum of understanding with the U.S. Forest Service and the Bureau of Land Management to review facilities on federal lands in Montana. For Siting Act projects the Energy program is designated the lead state agency for the environmental review process.

Delegated Authority. Not applicable.

ENVIRONMENTAL REMEDIATION DIVISION

This division is one of 6 divisions currently organized within the Department of Environmental Quality. It was formally organized in 1994 by removing from the former Department of Health and Environmental Sciences (DHES), Solid and Hazardous Waste Management Bureau those programs or portions of programs which have environmental cleanup responsibilities and consolidating them into the new division. The Environmental Remediation Division administers programs established to clean up sites contaminated by a variety of substances and activities, including: 1) Superfund or CERCLA (the federal Comprehensive Environmental Response, Compensation and Liability Act) which allows the state to investigate potentially hazardous disposal sites to determine if past disposal practices are resulting in threats to public health or the environment; 2) the Comprehensive Environmental Cleanup and Responsibility Act or CECRA (also referred to as the State Superfund or Mini-Superfund Act) which enables the state to investigate and cleanup or require cleanup of hazardous waste or other damaged sites in Montana that are not on the Federal National Priority List; and 3) the corrective action portion of the Montana Hazardous Waste and Underground Storage Tank Act, also referred to as the Underground Storage Tank Corrective Action program (USTCA), which provides for the remediation of leaking underground storage tank sites.

All three of the division's programs have been identified as being subject to review under the criteria established by the EQC. Budget, staffing, and funding source information for the division for FY 96 is provided below.

<u>Program/Activity</u>	<u>Funding Source, FY 96</u>					<u>FTE auth.</u>
	<u>General</u>	<u>State</u>			<u>Total</u>	
	<u>Fund</u>	<u>Special</u>	<u>Fees</u>	<u>Federal</u>	<u>Funds</u>	
Superfund(CERCLA)	0	25,059	0	2,474,430	2,499,489	13.05
Spec Proj.BNRR\ARCO	0	645,852 ¹	0	0	645,852	5.45
State SFund(CECRA)	0	908,221	0	100,000	1,008,221	9.80
UST LUST Trust	0	134,583	0	851,247	985,830	5.86
UST DEQ PetroBd	0	795,718	0	0	795,718	14.34
TOTAL (FY 96)	0	2,509,433	0	3,425,677	5,935,110	48.50

<u>Funding Source, 1990</u>						
Superfund (CERCLA)	0	11,933	0	6,226,727	6,238,660	14.00
Spec Proj.BNRR\ARCO	0	0	0	0	0	0.00
State SFund (CECRA)	0	222,631	0	0	222,631	1.50
UST LUST Trust	0	67,634	0	613,583	681,217	5.50
UST DEQ Petrobd	0	340,965	0	0	340,965	7.50
TOTAL (FY 90)²	0	643,163	0	6,840,310	7,483,473	28.50

Notes:

¹ Under compliance agreement, DEQ costs for oversight etc, are reimbursed by BNRR and ARCO.

² The Environmental Remediation Division did not exist in FY 90; information was extracted from DHES Solid and Hazardous Waste Bureau figures and include only Superfund, LUST/USTCA, and CECRA as identifiable.

sources: LFA, 1995, 1989., Geach 1996

Legislative History

Events important to the compliance/enforcement elements of the Environmental Remediation Division are summarized below.

- 1980 Congress enacts CERCLA
- 1983 Legislature authorizes Montana to implement portions of Federal CERCLA.
- 1984 Congress enacts Resource Conservation and Recovery Act (RCRA) Subtitle I, Federal UST program
- 1985 Montana enacts UST program through amendments to Montana Hazardous Waste Management Act.
- 1985 Montana CECRA enacted
- 1988 Federal EPA Underground Storage Tank regulations adopted
- 1989 Montana Petro-Fund enacted, funding remediation efforts for underground storage tanks
- 1989 Montana Underground Storage Tank regulations adopted
- 1989 CECRA first funded; with Resource Indemnity Trust funds
- 1994 Environmental Remediation Division formed from cleanup programs formerly in the Solid and Hazardous Waste Bureau.
- 1995 Department of Environmental Quality established; these Department of Health and Environmental Sciences programs incorporated into new DEQ.

Superfund Program

The purpose of the superfund program is to: 1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances; 2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and 3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

1. Constitutional and Statutory Goals. The following provides the statutory and constitutional goals of the Superfund Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II, Sec. 3, Inalienable Rights** - conveys the right of every Montanan to a clean and healthful environment for present and future generations.
- **Comprehensive Environmental Cleanup and Responsibility Act (CECRA) 75-10-706, MCA,**
 - (1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;
 - (2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and
 - (3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

Supplemental state authorities: None.

Related federal authorities:

- **Comprehensive Environmental Response Compensation and Liability Act (CERCLA)** does not specifically designate its purposes and goals, but the main purpose of the CERCLA Program is to facilitate the protection of human health and the environment by cleaning up environmental contamination caused by releases of hazardous substances.

CECRA administrative rules: None

Specific enforcement authority:
MCA 75-10-711, 714, & 715.

Primacy/jurisdictional agreements:

- None

2. Program Goals and Objectives. The Superfund Program implements activities under CERCLA and CECRA to clean up uncontrolled releases of hazardous and deleterious substances at sites in Montana in order to assure protection of public health and the environment and compliance with environmental laws and regulations. Following are the objectives the Superfund Program provided in 1995 legislative information on the program for the FY 96-97 biennium.

Note: Under CECRA, parties that can be held responsible for cleanup are designated as potentially liable persons; Under CERCLA, parties that can be held responsible for cleanup are designated as potentially responsible parties. For consistency purposes, these parties are hereafter referred to as responsible parties in this document.

A. Federal Superfund (CERCLA) Program

1. Investigate and prioritize sites where hazardous or deleterious substances have been released to the environment by conducting preliminary assessments and, where necessary, site investigations of sites identified in the Environmental Protection Agency (EPA) CERCLA information system.
2. Conduct remedial investigations and cleanup actions at the federal Superfund sites delegated to Montana for state-lead status under cooperative agreements with EPA.
3. Provide technical, legal, and management assistance to EPA for remedial investigations and cleanup actions at federal Superfund sites maintained in federal-lead status.

4. Assist EPA in recovering cleanup costs at sites with viable responsible parties by maintaining detailed records of work conducted and costs incurred at those sites.
5. Maintain the Clark Fork Basin comprehensive data management system and Geographical Information System and continue involvement in basin-wide issues by participating in the Clark Fork Coordinating Forum.
6. Provide communication and coordination with local governments and citizens by maintaining a Superfund toll-free hotline, responding to inquiries and requests for information, and coordinating input and expertise from other programs, bureaus and agencies.

B. State Superfund (CECRA) Program

1. Address high priority sites by overseeing the investigations and cleanups of sites being conducted by responsible parties either voluntarily or under order, by initiating orders for investigation and cleanup activities where necessary, and by initiating expedited interim cleanup actions where appropriate to eliminate imminent public health and environmental hazards.
2. Prioritize actions on sites by conducting initial sampling and research to determine the potential impact to public health and the environment, identifying responsible parties, and ranking the sites using the CECRA ranking system.
3. Recover costs at sites with viable responsible parties by identifying and notifying responsible parties, maintaining cost documentation records, and billing responsible parties.

4. Provide communication and coordination with agencies, local governments, and citizens by responding to inquiries and information requests, providing expertise to other programs, and developing and maintaining a site tracking database.
5. Conduct oversight of voluntary remedial actions initiated by responsible parties at medium to low priority sites.
6. Improve and expedite the state Superfund investigation and cleanup process by developing rules, cleanup standards, and guidance for program personnel and responsible parties.
7. Address grant and orphan sites, where there are no responsible parties, by conducting investigation and cleanup activities where necessary to eliminate imminent public health and environmental hazards as program resources allow.

C. Superfund Special Projects

1. Provide technical and legal review and input, including field oversight as necessary, at ARCO-initiated expedited actions at federal Superfund sites within the Clark Fork Basin.
2. Provide technical and legal review and input for nonsite-specific Superfund-related activities initiated by ARCO within the Clark Fork Basin, including treatability studies and cultural resources management plans, which are intended to speed up and streamline the Superfund cleanup actions in the basin.
3. Provide technical, legal, and management oversight of all remedial investigation and cleanup activities at Burlington-Northern sites under a Superfund cleanup consent decree.
4. Recover special-project costs from ARCO and Burlington-Northern by maintaining cost documentation records and billing the responsible parties regularly.
5. Provide communication and coordination with agencies, local governments and citizens by responding to inquiries and requests for information, and coordinating input and expertise from other programs, bureaus and agencies.

3. Program Activities. The Superfund Program manages three types of projects: 1) federal Superfund projects; 2) state Superfund projects; and 3) special projects funded by responsible parties at both state and federal Superfund sites.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg. Years Staff Retntn.¹</u>	<u>FY 96 Ongoing Sites/OU²</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Federal Superfund	2,536,165	13.05	NA³	8/23	NA	NA
State Superfund	1,008,221	9.8	NA	60	NA	NA
Special Projects	719,845	5.45	NA	3	NA	NA
Total	4,264,231	28.3	2.64	71/23	NA	NA

¹ The 2.64 represents the average turnaround for the entire Superfund Section between 1985 and 1996. Staff retention data is also available based on the following categories: between 1985 and 1996, 10 managers worked an average of 3.08 years; 8 attorneys worked an average of 2.59 years; 33 technical staff worked an average of 3.22 years; 21 clerical staff worked an average 1.45 years.

² OU stands for operable unit. Because most of the federal Superfund sites cover large areas, they are divided into "operable units," which are distinct parts of the site that can be readily investigated and cleaned up separately.

³ NA - Not available. Some of these statistics could be made available but more time would be needed to obtain them than the revision turnaround time provided by EQC.

Fees and Charges. The Superfund Section does not receive any funds from permit or other licensing or registration fees. However, part of the CECRA Program funding comes from recovery of state expenditures at CECRA sites where there are viable responsible parties. Typically, 50 to 60 percent of CECRA program costs are recovered. Between FY 94 and FY 95, CECRA cost recovery averaged \$372,465.47. The EPA handles cost recovery from responsible parties on federal Superfund sites.

4. Regulated Communities. Under CECRA and CERCLA, the following entities can be responsible parties at sites where hazardous substances have been released:

- current owners or operators (unless certain defenses apply);
- those who owned or operated the property at the time of disposal of the hazardous substance;
- those who arranged for the disposal of the hazardous substance on the property; or
- those who transported the hazardous substances to the property for disposal there.

Therefore the categories of responsible parties under CECRA and CERCLA are based on the relationship of the party to the property which poses the threat. As of January 1996, the DEQ has issued notice letters to 131 either corporate or individual entities at 63 state Superfund sites. Most of these

entities were noticed because they were either the current owner **and** operator and/or past owner **and** operator. The EPA handled notice letters for the federal Superfund sites.

Of the 8 federal Superfund sites, 5 are mining and 3 are wood-treating sites. Of the 277 state Superfund sites addressed or to be addressed by the CECRA Program, the following is a breakdown of the types of sites that gives an idea of the regulated community: 38 miscellaneous chemical/hazardous waste (plating, battery, spills, etc.), 36 mining/smelting, 31 woodtreating, 29 railroad, 28 landfills/dump, 26 old refineries, 21 pesticide sites, 17 miscellaneous petroleum sites, 13 drum/barrel sites, and 38 other (outdoor asbestos, solvent, radioactive wastes).

5. Philosophical Approach to Enforcement and Compliance. In Superfund, almost all of the program's actions involve forcing responsible parties to investigate and clean up sites. While the Superfund Program has enforcement authorities (in fact the whole of Superfund is built upon the ability of the EPA and DEQ to force cleanup of contaminated sites), these authorities are applied entirely differently from classical environmental enforcement. Classical enforcement is typically a last resort after other methods of permitting/compliance have failed to attain the results desired. Violations of permit requirements or laws are noted and enforcement actions taken to remedy those violations.

Superfund action, on the other hand, is not based on violation of laws or permits and consequent action. It is instead the identified risk or threat of risk to public health or the environment that can trigger the agency enforcement action. Decisions to take action are based primarily on the relative size of the risk, but also take into account the willingness of responsible parties to take action and the resources of the department available to take action. Because all of the program's actions are based on the program's authority to take direct enforcement action and because the program has the ability to recover all of its response costs, everything done, from the initial investigation at a site through final cleanup, could be considered an enforcement action.

Before significant state monies can be spent in remedial actions other than emergency actions, the DEQ must determine what entities are responsible parties, issue notice letters to them, and offer them the opportunity to conduct a timely remedial action. Typically, notice letters are the only enforcement tool needed to accomplish necessary remedial action at small sites. However, the DEQ issues either administrative orders on consent or unilateral orders at large sites that present the greatest threat to public health.

At some sites with multiple noticed entities, the DEQ may choose to only issue an order to one or a few of these multiple entities and not all of them. This is often done when one entity is more financially capable of conducting the action than other entities or when one entity contributed to the majority of contamination. More statistics on this issue are provided in the March 6, 1996 Superfund Section submittal to the EQC Enforcement and Compliance Subcommittee.

Frequency of violations are not taken into account at Superfund sites, principally because the contamination occurred historically and may not have involved any violations at the time the facility operated. However, the DEQ does take into account contribution to and causes of contamination in determining what entities are responsible parties. The DEQ attempts whenever possible to have the entities that contributed to the majority of the contamination be the entities responsible for cleanup. At 72% of 61 CECRA sites for which notice letters have been issued by the department, the responsible party addressing the site contributed the greatest portion of total contamination. If the entity that operated the facility and caused all the contamination problems is viable, then that is the only entity the DEQ is likely to take an enforcement action against even though other entities could be held

responsible. DEQ has not issued notice letters to entities that only maintain a residential use of the property, such as people who have houses overlying contaminated ground water.

6. Compliance Tools Available and Used. The menu of tools used by the Superfund Program is shown on the following pages.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SUPERFUND PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete ¹	Times Used? (95) ²
Education/Information/Technical Assistance: Pamphlets/Brochures explaining program Site specific fact sheets On site technical assistance Technical workshops	Provided upon request. Issued during critical stages in the investigation/cleanup process. Provided as needed. Provided as needed.	Program Staff Program Staff Program Staff Program Staff	unknown 8 unknown 2
Comprehensive Planning/Withdrawal:	Not authorized	Not applicable	Not applicable
Permits/Certification/Bonds/Voluntary Plans: Permits Voluntary Cleanup Plans	Not Authorized Anyone, whether a responsible party or not, can initiate voluntary cleanup plan by submitting a Voluntary Cleanup and Redevelopment Act proposal to DEQ. (This Act was not effective until May 1, 1995.)	Not applicable Anyone	Not applicable Two applications
Monitoring/Inspections:	When there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment and whenever the department has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information-gathering that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.	Program Staff	unknown

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SUPERFUND PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete ¹	Times Used? (95) ²
Administrative Notices/Orders/Settlements:			
General Notice Letters	After research is deemed adequate to identify responsible parties and action is deemed necessary on the site. Notice letters also trigger cost recovery. Notice letters are generally served on a priority basis (i.e., high priority sites noticed before low priority sites).	Director	51 ltrs/ 25 sites
Special Notice Letters	Used to initiate negotiations on Administrative Orders on Consent	Director	3 ltrs/ 15 sites
Administrative Orders on Consent/Consent Decrees	If cooperative responsible parties are involved on the site, an Administrative Order on Consent may be offered to initiate cleanup actions on the site.	Director	1
Unilateral Administrative Orders	When negotiations on an Administrative Order on Consent fail or when responsible parties are uncooperative or recalcitrant.	Director	1
Negotiation of De minimis Settlements	A negotiated settlement can be used when the department determines it to be practicable and in the public interest. If the department can promptly reach a final settlement with a person liable in an administrative or civil action and if the settlement involves only a minor portion of the response costs at the facility concerned, then in the judgment of the department if certain statutory conditions are met, the department and the responsible party may pursue a negotiated settlement.	Director	0
Administrative Penalties\Sanctions: Penalties	The department may assess penalties of not more than \$1,000 per day per violation against a person liable for a release or threat of release who has failed or refused to comply with an order issued by the department or against a person who has failed or refused to comply with an order issued by the department. In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable, his/her ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.	Director	unknown

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SUPERFUND PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete ¹	Times Used? (95) ²
Judicial Civil Action: Civil Penalties	A person who violates or fails or refuses to comply with an order issued may, in an action brought to enforce the order, be assessed a civil penalty of not more than \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account: (I) the nature, circumstances, extent, and gravity of the noncompliance; (ii) with respect to the person liable: (A) the person's ability to pay; (B) any prior history of violations; © the degree of culpability; and (D) the economic benefit or savings, if any, resulting from the noncompliance; and (iii) any other matters as justice may require.	Director approval, District Court Decision	1
Cost Recovery Actions	When one or more responsible parties does not reimburse DEQ for outstanding costs, DEQ may file for cost recovery. Can be used anytime a responsible party does not pay within 60 days of receiving a bill.	Attorney	
Criminal Judicial Action	Not Authorized	Not Applicable	Not Applicable

¹ For each particular site, the assigned technical project officer and attorney evaluate what entities are responsible parties by collecting information on the site ownership and operation. They consult with the Superfund Program Manager and Environmental Remediation Division Administrator in deciding which of the possible responsible parties should be issued notice letters, orders, or penalties. Their recommendation is provided to the Director, who makes the final decision on notice letters, orders, or penalties.

² Tracked for calendar year 1995.

7. Incentives for Compliance. The following list includes several of the methods used to promote compliance. Section staff have divided this category into two subcategories: 1) Disincentives for Noncompliance, and 2) Incentives for Compliance. Section staff believe the disincentives for noncompliance have a stronger effect than the incentives for compliance.

A. Disincentives for Noncompliance

1. Noncompliance with terms of notice letters or orders can result in the entity being required to reimburse the state for its costs in conducting the required action plus two times the amount of the state's costs.
2. Statutory penalties available to the state include administrative penalties of \$1,000/day and civil penalties of \$10,000 day/violation. Willful violation of a CERCLA order at a federal Superfund site carries a penalty up to \$25,000 per day for each violation. In addition, orders typically have stipulated penalties for noncompliance with particular terms of the order, such as deadlines for documents required by the order.
3. Because the liability scheme under CECRA is explicitly strict, several, and joint, responsible parties initially focus resources on cleaning up sites than litigating over culpability/responsibility.

B. Incentives for Compliance

1. Superfund technical and legal staff provide meeting opportunities and written comments to assist responsible parties in understanding requirements. Orders require the DEQ or EPA approval of key elements of planned cleanup action by responsible parties.
2. A "no further action" letter is available to entities successfully conducting DEQ-approved voluntary remedial actions in compliance with the new Voluntary Cleanup and Redevelopment Act.
3. Both Superfund Programs have general guidance on remedial investigations/feasibility studies and risk assessments that assists responsible parties in conducting these activities.
4. Parties that cleanup facilities in compliance with terms of Superfund laws and orders have a legal right of contribution against other responsible parties for an equitable share of the costs.
5. Compliance with Superfund laws and orders allows a responsible party contribution protection from other responsible parties that did not settle with the state.
6. Educational Efforts:
 - a. Superfund staff give formal presentations at meetings, conferences, annual meetings, and workshops to explain the requirements of Superfund.
 - b. Public meetings and comment periods are advertized and held frequently throughout the Superfund investigation and cleanup process.
 - c. Testimony is provided at legislative committee hearings.

- d. News releases and articles for the news media are prepared, released and distributed for public information purposes.
- e. Fact sheets are provided for large sites undergoing multi-year remedial actions at critical phases in the Superfund Process such as completion of a remedial investigation, feasibility study, risk assessment, or proposed plan.
- f. A database is maintained to provide general information on all facilities.
- g. Every two years, a Superfund Basics booklet is produced to explain the Superfund process and to summarize progress on specific sites.

8. History of Compliance. Section staff have indicated that it would take a greater level of effort than available in the revision time provided to them to provide the requested graphs similar to the Hard Rock permitting and noncompliance statistics over ten years. In addition, the type of violations in Superfund do not lend themselves easily to the desired graphical presentations. Instead, the following qualitative information summarizes all Superfund violations since its inception.

I. Violations at Federal Superfund Sites

- A. DEQ lead orders - no violations
 - 2 investigation orders
 - 1 information order
 - 1 removal order
 - 5 access orders
 - 1 consent decree
- B. EPA lead/DEQ signatory orders - no violations
 - 7 investigation orders
 - 1 removal order
 - 1 consent decree

II. Violations at State Superfund Sites

- A. DEQ orders - 3 violations
 - 1 investigation consent decree
 - 4 fencing orders
 - 6 investigation orders
 - 5 information orders
 - 1 access order
 - 6 removal orders
- B. Notice Letters
 - 1. 63 cost recovery actions initiated - 7 violations
 - 2. 20 remedial actions required - 5 violations

A more detailed explanation of this compliance history is available in the March 6, 1996 Superfund Section submittal to the EQC Enforcement and Compliance Subcommittee.

9. "Violations"

- A. Violations of orders/consent decrees - No violations occurred in 1995.
- B. Violations of notice letter provisions
 - 1) Cost Recovery Violations: Once the department issues notice letters, it bills the identified responsible parties for state oversight costs on a quarterly basis. For the notice letters issued in 1995, costs were not paid at five sites. State costs at these five sites for calendar year 1995 totaled \$35,741.56. For on-going cost recovery violations from notice letters issued before 1995, outstanding costs in 1995 totaled \$127,456.28 for two sites.
 - 2) Remedial Action Violations. For the notice letters issued in 1995, remedial actions were not conducted by responsible parties as required at four sites. Following is a description of the violations at these for sites:
 - Site 1: The responsible parties are disputing ownership and did not conduct the required tank removal action in the time frame allotted.
 - Site 2: The responsible party did not submit the required cleanup plan because he was bankrupt and had arguably noticed DEQ of his bankruptcy.
 - Site 3: The responsible party did not meet the deadline for submitting an acceptable investigation work plan.
 - Site 4: Due to claim of a bankruptcy bar, the responsible party declined to participate in a requested meeting.

Discovery of Violations

A. New Sites

Alleged releases of hazardous substances are identified from various sources, including but not limited to citizen complaints; referral from the EPA or other state environmental agency or other environmental programs within the DEQ; and employee complaints. Section staff did not have statistics readily available on the source of complaints. They received 12 complaints in 1990, 35 in 1991, 46 in 1992, 21 in 1993, 19 in 1994, and 13 in 1995. More information on procedures of handling new sites is contained in the Superfund Section March 6, 1996 submittal to the EQC Enforcement and Compliance Subcommittee.

B. Existing sites

Violations of orders or notice letter requirements for particular remedial actions at Superfund sites are typically identified via field inspections documented with photographs and a field inspection report. The other type of violation, that of a missed deadline for a deliverable or inadequacy of a deliverable, is determined via tracking of document submissions and analysis of how document requirements are addressed in the deliverable. For example, if an order requires DEQ comments on a draft document to be incorporated into a final document and those comments are not incorporated, DEQ would note the

violation in writing and take the appropriate response provided for in the order. Sometimes that response can be that the agency makes the needed revisions in the document.

10. Considerations in Calculating Penalties. In determining the amount of any administrative penalty assessed pursuant to § 75-10-714, MCA, the department will take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under § 75-10-715(1), MCA, the ability to pay; any prior history of such violations, the degree of culpability, the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

Section 75-10-711, MCA, provides that, in determining the amount of a civil penalty in response to a violation of an order, the court may take into account:

1. the nature, circumstances, extent, and gravity of the noncompliance; and
2. with respect to the person liable under § 75-10-715(1), MCA,
 - the person's ability to pay;
 - any prior history of violations;
 - the degree of culpability; and
 - the economic benefit or savings, if any, resulting from the noncompliance; and
 - any other matters as justice may require

No other calculation formulas for penalties exist.

11. Resolution of Noncompliances

Resolution of the 1995 calendar year violations identified in No.9 “Violations” is as follows:

A. Notice Letter Cost Recovery Violations

Of the five cost recovery violations initiated in calendar year 1995, one was resolved with payment by the responsible party of outstanding costs in 1996. Two of the four remaining violations are now being handled by the Attorney General’s bankruptcy attorney. It is expected that costs will be paid on the fourth site that is undergoing a voluntary cleanup this year because costs must be paid by the responsible parties in order to obtain a no further action letter. The DEQ has not proceeded with a cost recovery suit at the fifth site because of questions concerning the viability of the responsible parties that need to be determined before significant resources are spent seeking costs from a entity that can not pay them. Resolution involves the filing of a cost recovery action in court, which will require a significant level of attorney effort. They are not considered a high priority project at this time given the amounts involved and given the “cushion” provided by the CECRA statute of limitations.

For the on-going cost recovery violations at two the sites described in Section 10(B)(1), DEQ has filed a claim for delinquent costs as part of on-going litigation at one site and initiated negotiations on a Department of Defense State Memorandum of Agreement that will provide for reimbursement of state costs at the other site. The Department of Defense has placed negotiations on hold pending resolution of federal budget issues.

B. Other Notice Letter Violations

Resolution of the 4 violations discussed in Section 9(B)(2) is as follows:

Site 1: DEQ conducted the required tank removal action and one responsible party involved agreed to reimburse DEQ costs.

Site 2: Since this site involves a bankrupt party that is not viable, the DEQ is working with several prospective purchasers and the lender on a possible voluntary cleanup.

Site 3: The DEQ is reviewing the financial capabilities of the responsible party to conduct the action.

Site 4: This site involves a responsible party claiming a bankruptcy bar and will be handled by the Attorney General's bankruptcy specialist in cooperation with the CECRA Attorney.

More details on resolutions on all violations is provided in the Superfund Section's March 6, 1996 submittal to the EQC Enforcement and Compliance Subcommittee.

12. Current Compliance Priorities. Section staff have identified the following **short-term** priorities involving compliance:

- 1) Resolve the outstanding notice letter violations described in Sections 9B and 11 A and B.
- 2) Assure compliance with provisions of notice letters and orders issued in 1996 on high-priority sites.

13. Compliance Relationships with Other Agencies

Oversight. There is no federal oversight of the CECRA Program. However, there is federal oversight of the CERCLA Program, which is almost entirely federally-funded. This oversight involves EPA's review and approval of cooperative agreements that specify the state's activities at federal Superfund sites and the funding provided for these activities. The DEQ provides quarterly financial and progress reports on these cooperative agreements. State expenditures of federal moneys are the subject of periodic federal audits. EPA and the state work very closely together on the federal Superfund sites by, for example, providing comments to the lead entity on projects, reaching joint records of decisions, and being joint parties to administrative orders.

Partnerships. Neither the CERCLA or CECRA Program have any interagency agreements with other state agencies involving enforcement. However, the CERCLA Program has the ability, through cooperative agreements and MOUs with the EPA, to conduct enforcement activities at federal Superfund sites. The state must have its own independent enforcement authority to be able to conduct these actions at federal sites, and DEQ uses CECRA as its authority. The procedures involved in this "delegation" of enforcement authority from the EPA to the DEQ are covered in both CERCLA and the National Contingency Plan, which sets out EPA's regulations for implementing CERCLA. In addition, more specific guidance on how DEQ conducts these enforcement actions is contained in site-specific

cooperative agreements. The DEQ has used this authority to conduct enforcement actions at 2 NPL sites - Montana Pole and Silver Bow Creek.

Within state government, the Superfund Section regularly consults with the Montana Department of Justice Natural Resource Damage Litigation Program and the Department of Fish, Wildlife, & Parks on an internal basis and contracts for services with the State Library Natural Resource Information System and the Montana universities.

Delegated Authority. Any delegated federal authority for DEQ action at federal Superfund sites is handled as described above through site-specific cooperative agreements.

Underground Storage Tank Corrective Action Program

The Underground Storage Tank Corrective Action Program comprises the Leaking Underground Storage Tank (LUST) Trust Fund Program and the Petroleum Tank Release Compensation Fund (PTRCF) technical staff. This program is responsible for implementing the corrective action or release response requirements of the Montana Hazardous Waste and Underground Storage Tank law and ARM Title 16, Chapter 45, Sub-Chapter 6. It oversees, requires and sometimes performs, by contract, the cleanup of sites contaminated by releases of regulated substances from underground storage tanks. Regulated substances are liquid petroleum products and hazardous substances. Hazardous substances are those so defined by the federal Superfund Act (the federal Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA).

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Underground Storage Tank Corrective Action Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II Section 3 and Art. IX Section 1:** Maintain and improve a clean and healthful environment for present and future generations.
- **Montana Hazardous Waste and Underground Storage Tank Act;** (MCA Sec 75-10-401 et.seq.)
- **Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA);** (MCA Sec 75-10-701 et.seq.)

Supplemental and/or related state authorities:

- **The Montana Solid Waste Management Act** (MCA 75-10-201, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)
- **Petroleum Storage Tank Cleanup** (MCA 75-11-301, et.seq.)

Related Federal authorities:

- **Resource Conservation and Recovery Act (RCRA)** Subtitle I
- **CERCLA**

Underground Storage Tank rules:

- ARM 16.45.101-1240

Specific enforcement authority:

- **Montana Hazardous Waste and Underground Storage Tank Act:**
 - a. Administrative Rules: §75-10-405(2)(c);
 - b. Administrative Enforcement: §75-10-413;
 - c. Injunctive Relief: §75-10-414;
 - d. Civil Penalties: §75-10-417;
 - e. Administrative Penalties: §75-10-423.
- **Montana Comprehensive Environmental Cleanup and Responsibility Act:**
 - a. Administrative Rules: §75-10-702;
 - b. Administrative Remedial Action Orders and Civil Penalties §75-10-711(4),(5);
 - c. Legal and Equitable Relief: §75-10-711(8);
 - d. Administrative Penalties: §75-10-714;
 - e. Cost Recovery and Penalties: §75-10-715.
- Primacy and jurisdictional agreements:
 - a. State program approval and primacy from the federal EPA
 - b. State program\Assiniboine Sioux cooperative agreement
 - c. State\EPA Cooperative Enforcement Agreement

2. Program Goals. Based upon the above-referenced guidance, the Underground Storage Tank Corrective Action Program has identified the following program goals:

1. To protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;
2. To encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred from underground storage tanks, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

- | | |
|---|--|
| 3. To provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.
4. To remedy violations of underground storage tank requirements pursuant to the Montana | Comprehensive Environmental Cleanup and Responsibility Act [75-10-701, et.seq., MCA]. To remedy violations of underground storage tank requirements established under the Montana Hazardous Waste and Underground Storage Tank Act [§§75-10-401, et.seq., MCA] |
|---|--|

3. Program Activities. In general, the Underground Storage Tank Corrective Action Program (USTCA) implements the environmental cleanup requirements of the Montana Hazardous Waste and Underground Storage Tank Act (MCA 75-10-401 et.seq.) The Underground Storage Tank (UST) Program is currently split into two units; one which implements the tank management, licensing, and permitting requirements designed to prevent releases (the UST Release Prevention Program), and this Corrective Action Program which manages and requires remediation of the releases which do occur. The UST Corrective Action Program staff responds to tank owner notices of releases or spills and to complaints regarding fuel or chemical vapors or ground water contamination which may be related to an underground storage tank. The USTCA Program itself consists of two subunits. One staff unit deals with releases for which the source and responsible party is known in an attempt to correct the problem in accordance with state law (the Department of Environmental Quality, Petro-Fund Program). The other staff unit deals with releases or complaints for which there is no obvious identifiable source or responsible party, or the responsible party is known but is either financially unable to respond or is recalcitrant. This latter program is 90% financed with federal EPA Leaking Underground Storage Tank (LUST) Trust funds.

<u>Program Activities</u>	<u>FY96 Budget</u>	<u>FY96 FTEs*</u>	<u>Avg. Years Staff Retntn**</u>	<u>1996 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
DEQ-PetroFnd resps	\$795,718	14.34	2.06 yrs	1305	NA	350
LUST Trst respses	\$1,010,073	5.86	2.06 yrs	25	NA	10
TOTAL	\$1,805,791	20.2 auth.				

* includes 0.5 FTE attorney, 5.2 FTE in supervisory, administrative, and program support activities. Current actual staffing level= 19.2 FTE.

** Refers to an average of the following:

Between 1985 and 1996, the average length of employment in the program for the four basic employee groups was:

Administrative Support	2.41 years
Solid & Haz Wste Specialists	2.18 years
Administration	2.23 years
Attorneys	1.42 years

source: Kuhn, 1996.

Fees and Charges. The program receives **no** revenues from fees or charges. It receives an EPA grant to fund the Federal LUST Trust efforts (90% EPA and 10% state RIT match) and the balance of the program's effort, (the DEQ-PetroFund program) is funded by the Petroleum Tank Release Compensation Board (PTRCB or Petro-Board). The program receives no General Fund monies.

<u>Type</u>	<u>Amount</u>	<u>Prog cummul. Total</u>	<u>FY 96 Total</u>	<u>Allowed Uses</u>
Cost Recovery- LUST Trst	varied	\$170,500	0	*UST prog
Noncompliance Penalties:	varied	17,500	0	general fund
Admin. fines (under CECRA)	varied	0	0	**EQPF
Admin. fines (under HW\UST)	varied	rules not final	-	general fund
TOTAL:		188,000		

*UST Corrective Action Program

**Environmental Quality Protection Fund

source: Kuhn, 1996.

4. Regulated Communities. The regulated community for the Underground Storage Tank (UST) Program includes any "person," as defined in MCA §75-1-403(12), who owns or operates an underground storage tank system. The regulated community for the UST Corrective Action Program includes any UST owner or operator who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance. The universe of UST owners and operators consists of federal, state and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms and other industrial and commercial enterprises (see UST Release Prevention Program summary in the Waste Management Division for graphic).

In trying to obtain compliance with the corrective action requirements of the UST Program, the regulated community sorts itself into various categories. The USTCA Program utilizes a variety of informal and formal compliance and enforcement tools for these communities.

Known owners/operators eligible (in compliance with UST program requirements) for partial reimbursement of remediation costs from the Petro-Fund.

Known owners/operators eligible for Petro-Fund reimbursements **but**

- a) financially unable to afford the 50\50 cost share on the first \$35,000 in remediation costs or
- b) recalcitrant....LUST Trust designation.

Known owners/operators NOT eligible for Petro-Fund reimbursements because they are

- a) not in compliance with UST program requirements and who are:
 - 1) financially solvent, or
 - 2) not financially solvent or recalcitrant....LUST Trust designation.
- b) statutorily excluded from fund access (chemical tanks, railroads, etc,)
 - 1) financially solvent, or
 - 2) not financially solvent or recalcitrant....LUST Trust designation.

Unknown source(s) of release....LUST Trust designation; remedial investigation by agency to identify liable party(ies).

5. Philosophical Approach to Compliance. The UST Corrective Action Program is somewhat unique from the universe of environmental pollution prevention programs. By the time this segment of the UST Program gets involved with the owner/operator of a facility, a release and some level of pollution/contamination has already occurred. The USTCA Program's efforts at obtaining compliance are centered around identifying the environmental harm and compelling corrective action necessary and commensurate with the risks to public health, safety and the environment.

The program utilizes an escalating enforcement strategy. The program tries to use the least resource-intensive enforcement activities first in most instances. Initial efforts focus on informal enforcement actions, such as warning letters, informal notices of violation, requests for additional information or corrective action plan submittal, staff field visits or follow up telephone calls in order to achieve voluntary compliance. These efforts are initiated by the program's technical staff case managers. More resource-intensive actions, such as formal Notices of Violation and Order, judicial actions, etc., are taken only when a lower-level enforcement action fails to achieve the desired response.

The type of enforcement response selected depends on the seriousness of the violation and the potential threat it poses to human health and the environment. Also considered is the current operational status of the source of the release (operational or nonoperational), the owner's cooperation and financial ability to conduct the required release investigation and corrective action.

6. Compliance Tools Available and Used. The program has a variety of tools to encourage and obtain compliance with the corrective action requirements of state law. The "enforcement tools" used range from informal to formal enforcement activities.

The program uses a number of informal "enforcement tools" to encourage UST owners and operators to comply with corrective action requirements. These informal enforcement tools include warning letters, personal meetings, informal notices of violations and the option of using the LUST Trust designation in cases of recalcitrance.

As stated above in 2) Program Goals(2), staff attempts to gain UST owners' voluntary compliance with the corrective action requirements of law. The program works closely with owners of leaking USTs to determine if they can qualify for partial remediation cost reimbursements through the Petro-Fund. If the tank owner is/was in compliance with the UST Program law and rules when the release was discovered, the Petro Board is authorized to reimburse a portion of the eligible leak investigation, remediation and 3rd party damage costs up to \$1 million per release. The first \$35,000 in costs are cost shared 50/50 with the tank owner. In general, the USTCA Program has not needed to take strong enforcement measures to achieve compliance with the corrective action requirements due to the availability of the Petro-Fund and the rules for access to the fund.

In the event of 1) a complaint or release that cannot be causally linked with a specific tank source, 2) an identified but financially insolvent liable tank owner, or 3) an identified but recalcitrant liable owner, the USTCA Program utilizes a combination of enforcement authorities from the Hazardous Waste and Underground Storage Tank law and the CECRA Act to compel compliance or to take unilateral state investigation and remediation action. State action is cost recoverable, plus up to twice actual costs for damages, against the responsible party(ies) in accordance with the provisions of CECRA and federal law (RCRA SubTitle I). The agency utilizes these provisions to encourage responsible parties to conduct their own investigations/remediations in accordance with program requirements. Otherwise, state efforts with public (mostly federal) funds are prioritized based on potential or actual harm and endangerment to the public and the environment and, to a lesser extent, on the likelihood of cost recovery. Legal

enforcement against insolvent or bankrupted responsible parties is not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs. However, the use of public funds may be absolutely necessary in cases of severe actual or potential impacts.

Informal enforcement activities

- Warning letters
- Follow-up meetings, phone calls
- Follow-up inspections
- Informal notices of violations

The following stricter, more resource-intensive formal enforcement activities are taken when efforts to gain voluntary compliance have been unsuccessful:

Formal enforcement activities

Administrative remedies

- Formal Notices of Violation;
- Administrative Orders;

Judicial remedies

- Civil actions (court ordered corrections, penalties)
- Injunctions

The program has statutory authority (§75-10-423, MCA) to utilize administrative civil penalties. The DEQ has prepared, but not adopted, administrative rules which will implement a field citation program. The agency also has authority under CECRA (MCA Sec 75-10-714) to utilize administrative civil penalties for certain situations.

The menu of tools used by the UST Corrective Action program is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest single incentive for compliance with the Underground Storage Tank Corrective Action rules and regulations are for owners and operators to maintain eligibility for potential Petro-Fund reimbursement if petroleum release occurs at their facility. This is clearly a strong incentive as cleanups can easily exceed the \$17,500.00 copayment requirements ("deductible") of the Petroleum Fund.

Agency-Generated.

- Tank owners (generally) are only eligible for state-provided financial responsibility and partial corrective action cost reimbursement if they are found to be in compliance with tank management and release prevention requirements.
- The agency has cost recovery authority up to costs plus twice agency costs if the state is forced to remediate the site using the federal LUST Trust Fund.
- The presence of regional program offices in Billings and Polson.

Industry-Generated.

- Property valued as an asset or liability depending on status of facility remediation or "clean bill of health".
- Real estate property transfers/fiduciary concerns.

Other.

- Threat of financial ruin and 3rd party suits from undetected or unremediated releases possibly causing catastrophic impacts to ground water or adjoining properties.
- Danger of fire or explosion from vapor migration and accumulation.

STATE COMPLIANCE/ENFORCEMENT TOOLS --UNDERGROUND STORAGE TANK CORRECTIVE ACTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits\Certification\Bonds	No USTCA permits are required; however, during some UST remediation efforts, tank owners may be required to obtain discharge/disposal permits from the DEQ, Water Quality Division, the Waste Management Division and/or the Air Quality Division, depending on the substance involved and the selected method of treatment or disposal.	DEQ staff, advice from USTCA staff	unknown
Certification\Bonds	Not authorized		

STATE COMPLIANCE/ENFORCEMENT TOOLS --UNDERGROUND STORAGE TANK CORRECTIVE ACTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections:			
-Informal	No informal inspections. The program is typically in a response mode to an environmental release. Essentially, all inspections are formal investigations to determine the extent and magnitude of the contamination. See also "Compliance inspections" below.	staff	-
-Formal monitoring reports	Required as the result of remedial investigation/cleanup work plans. Status reports of remediation efforts are required to be submitted quarterly, or semi-annually. Compliance monitoring may be required for up to 2 years following required corrective actions.	staff	2600+
-Compliance inspections	Ad hoc; environmental risk or complaint driven. Staff will conduct inspections of ongoing remediation efforts and follow-up inspections of compliance and enforcement requests or orders. In response to a unknown source release, staff can inspect facility leak detection or other records to help determine source.	staff	1000+
-Self Certification or Notification	Agency must be notified by tank owner/operator of release within 24 hours of tank release discovery. Agency must receive summary report of initial leak response and abatement within 30 days of discovery. Unless waived by USTCA Program, a site history report must be submitted within 30 days of discovery.	staff	323
-Sampling Inspections	Agency authorized to enter and inspect facilities at reasonable hours upon presentation of credentials to sample materials, wastes, soil, water, or copy records etc, if agency believes there is noncompliance or in order to enforce law, rules or order.	staff	50-100 per year

STATE COMPLIANCE/ENFORCEMENT TOOLS --UNDERGROUND STORAGE TANK CORRECTIVE ACTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders:			
Notice of Violation -Warning Letter	Issued for minor violations (i.e. failure to conduct a remedial investigation; late reporting) and when: 1) compliance is anticipated/expected, or 2) environmental risks are minimal.	staff	300 through '95
-Informal issued within 30 days of violation discovery	Issued for violations requiring corrective action and requesting submittal of action plan by date certain, with warnings of follow-up enforcement responses for noncompliance. Copies of Notices of Violations (NOVs) are submitted to the Petroleum Tank Release Compensation Board.	staff	5
-Formal issued within 90 days of discovery	Issued if no response to informal actions and with formal citations of law. May include order to conduct corrective action.	Director UST legal staff	0
Administrative Orders	May be issued to compel a remedial investigation, submittal of compliance plan, or to correct a violation of law or rule (MCA 75-10-413). Order becomes effective in 30 days unless recipient requests a hearing before the Board of Environmental Review.	Director	0
Cleanup orders-	Issued for unlawful discharges of regulated substances requiring cleanup, treatment or removal. (MCA 75-10-416).	staff	0
Agency actions	Under CECRA provisions (MCA 75-10-711 & 715) after written notice to responsible party and failure to act in a timely manner, agency may use federal LUST Trust funds to conduct remedial investigation and/or remediate site.	UST CA Program Manager	50 total to date
Emergency Actions	Agency may take unilateral action without required notice to the responsible party in the event of an imminent and substantial danger and the responsible party can/will not act properly and expeditiously. Notice to liable party must be given 5 days after agency action.	Director	ave. 1 per year

STATE COMPLIANCE/ENFORCEMENT TOOLS --UNDERGROUND STORAGE TANK CORRECTIVE ACTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: Notice of Violation/Proposed Penalty (NOVPP) NOV Modification Penalty waiver Opportunity for Conference/ Hearing	Authorized under MCA 75-10-423 for violations of UST law or rules adopted under MCA 75-10-401 et.seq. Maximum penalty \$500\violation.	staff; not yet implemented	0
	Authorized under CECRA (MCA 75-10-714) for failure to comply with an order to 1) remediate a release or threatened release which may pose an imminent and substantial threat to the public health, safety or welfare or the environment or 2) to provide consent for information gathering and site access relevant to a release or threatened release. Maximum administrative civil penalty \$1000\violation.	Director	0
	Established through matrix adopted by pending rule allowing for gravity of violation, harm, and corrective action taken.	Director	0
	Under CECRA (MCA 75-10-714), agency required to consider nature, circumstances, extent, and gravity of the non-compliance and violator's ability to pay, any prior history of such violations, degree of culpability, and economic benefit or savings.	Director	0
	To contest alleged violation or to request mitigation of penalty. Hearing conducted as a contested case under the provisions of the Mont. Admin Procedures Act (MAPA).(MCA 75-10-423) Also under CECRA (MCA 75-10-714) hearing on penalty is subject to judicial review under the provisions of MAPA.	Director Director	0 0

STATE COMPLIANCE/ENFORCEMENT TOOLS --UNDERGROUND STORAGE TANK CORRECTIVE ACTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action:	For violations of UST and or CECRA law, rules, orders of agency or the Board of Environmental Review. Maximum \$10,000\violation\day.	Director	0
Injunctions	To require compliance with law, rule, or order of the department or the Board of Env. Review; to immediately restrain unauthorized activity endangering or causing damage to public health or environment; to avoid imminent hazard endangering public health or environment.	Director	0
Criminal Judicial Action:	Not authorized for UST Program in Montana Hazardous Waste and Underground Storage Tank Act or the CECRA Act.	NA	NA

8. History of Compliance. Trends in compliance with the UST Corrective Action Program rules and requirements are illustrated below. The program implemented minimal federal EPA requirements for corrective action and utilized state water quality and CECRA requirements prior to 1989. Since then, the federal and state UST Program corrective action rules have been developed and the state Petro-Fund reimbursement program was established. Compliance history for the program does not extend significantly back beyond 1989.

Through the end of 1995, program staff have identified a total of 2,654 UST releases and closed 1,372 releases (Figure 1 and Table 1). These include active in-use USTs where leaks were discovered through tank testing and monitoring, vapor migration or ground water contamination complaints, excavation of nearby properties or by other means, as well as discoveries of after-the-fact releases from the estimated 15,793 USTs which have been removed from the ground since 1984. As of April 1996, a total of 2,746 releases were identified, and 1,441 resolved to the agency's satisfaction. Currently, 1,305 releases are still active in terms of needing additional or ongoing monitoring or other corrective action efforts.

Table 1
1995 USTCA Program - Confirmed Release Compliance Requests

Year*	Total Confirmed Releases**	Owner/Operator Responded-Releases Resolved at Year End	Active Releases at Year End	LUST Trust Actions Taken/ (Emergency Responses) ¹	Informal NOV's Written
1988	45	4	41	3/1	NA
1989	142	12	130	7/1	NA
1990	344	104	266	7/1	NA
1991	441	197	360	8/0	NA
1992	474	261	332	7/1	NA
1993	504	273	371	7/1	NA
1994	419	318	333	6/1	6
1995	323	203	275	5/1	5
Totals	2654	1372	NA ²	50	11

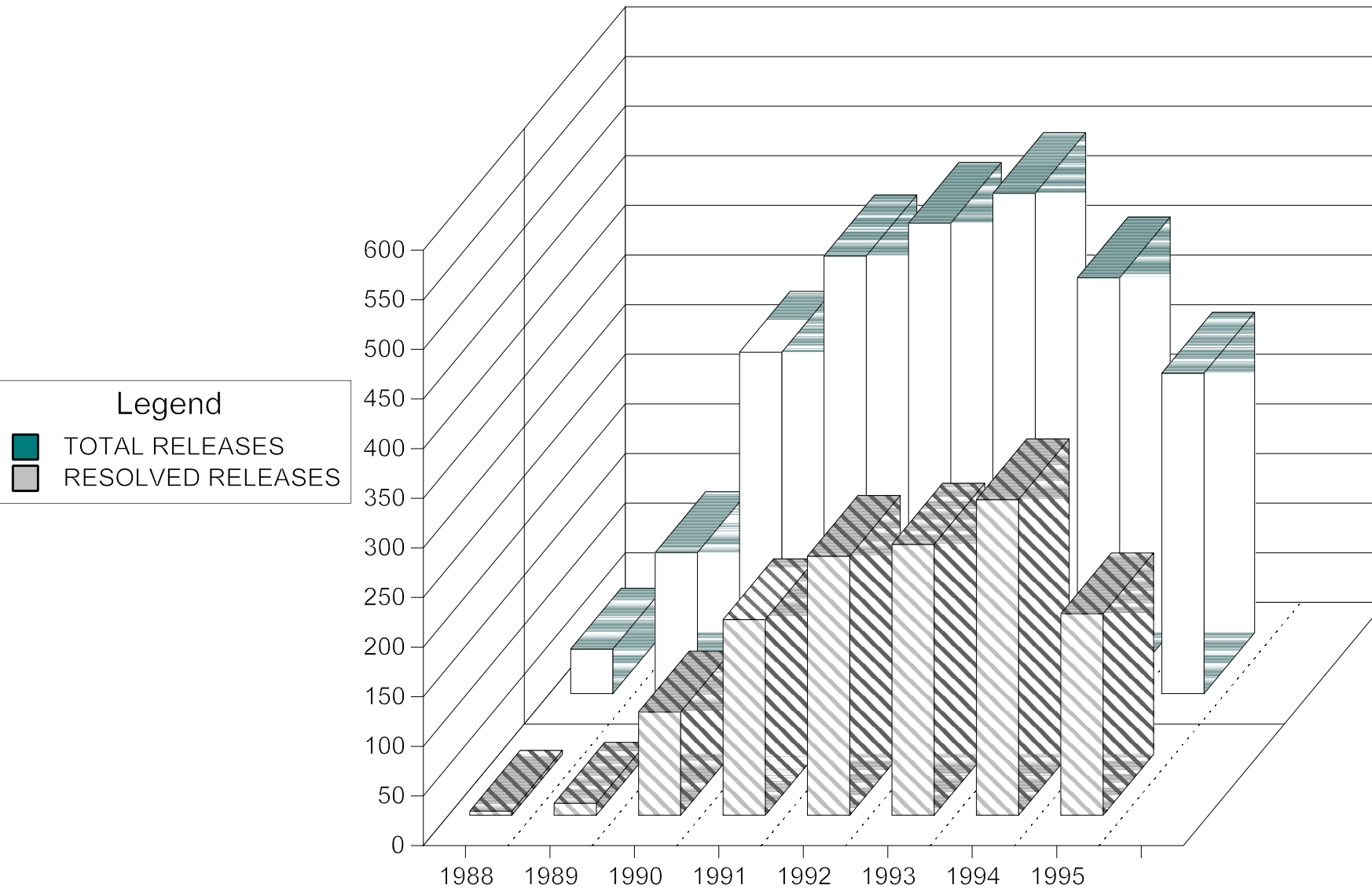
***Year Statistics not cumulative**

****See Figure 1**

Notes: 1 - Emergency Responses are a subset of the total number of LUST Trust sites
2 - Not a total

source: Kuhn, 1996.

FIGURE 1
ANNUAL RELEASE STATISTICS



9. "Violations." The UST Corrective Action Program has no written policy establishing a hierarchy of violations. The program has adopted as standard operating procedure that the following violations are most serious because these deficiencies are most often responsible for releases occurring and they may exacerbate the severity of the release:

1. Failure to promptly report a release.
2. Failure to take emergency release response action.
3. Failure to recover free product.
4. Failure to conduct a remedial investigation and implement corrective action.
5. Failure to submit required remedial investigation or corrective action documentation and progress reports.

The average number of violations identified per year by the USTCA Program is 100-150. Approximately 90% of the violations are the failure of the tank owner/operator or the owner's remediation consultant to submit required documentation or corrective action work plans within specified time frames. These do not typically result in formal enforcement but are pursued through request and warning letters.

Failure to notify the department of a release within 24-hours of discovery represents a significant compliance violation that may result in loss of Petro-Fund eligibility and potential civil action by the department. To date 7 sites have been denied Petro-Fund eligibility for failure to report a release within 24 hours. The department has initiated civil enforcement actions against some sites where this has occurred due to the increased severity of contamination that could have been otherwise prevented had the party notified the agency of the existence of the release within 24 hours of its discovery.

Other violations from 1994 through 1995 resulted in approximately 11 informal notice of violation letters and 6 formal enforcement actions including administrative orders and civil suits. All of the 11 NOV's written by the program from 1994-1995 represent responsible parties who failed to address investigation and cleanup of their releases within time frames required by the department. The UST Corrective Action Program views this as significant due to the potential for petroleum to migrate off-site and impact down-gradient utility corridors. Such migration could lead to substantial endangerment of human health, fire or explosion. In addition, uncontrolled petroleum releases cause increased environmental and property damage that may impact local real estate values. Increased cleanup expenses in such scenarios may not be eligible for Petro-Fund reimbursement if it can be shown that damage from the release could have been minimized if proper action had been taken immediately. The Petroleum Tank Release Compensation Board, which administers the Petro-Fund, has authority to deny eligibility for any site that does not remain in compliance with all applicable federal and state UST requirements.

The FY 94 and 95 list of Underground Storage Tank Corrective Action formal and/or informal and violations is shown below in Table 2.

Table 2
USTCA Program Violations, by Type and Status

NOV Sent	Desc.of Violation	Type of Operator	Penalty Assessed	Admin. Order Sent	Status at Year End
2-09-94	failure to complete RI*	Commercial UST	no		resolved by program
2-09-94	failure to submit RI work plan	Commercial UST	no		resolved by program
2-09-94	failure to complete RI	former commercial UST	no		resolved by program
4-26-94	failure to submit RI work plan	Commercial UST	no		resolved by program
7-05-94	failure to complete RI	Commercial UST	no		resolved by program
9-12-94	failure to complete RI	Commercial UST	no		resolved by program
5-11-95	failure to continue with cleanup	Commercial UST	no		resolved by program
5-20-95	failure to complete RI	Commercial UST	no		resolved by program
6-06-95	failure to submit RI work plan	Commercial UST	no		resolved by program
8-14-95	failure to submit RI work plan	Commercial UST	no		resolved by program
Admin Order: 9-10-95	failure to remove USTs and investigate suspected releases	Commercial UST	no	9-10-95	LUST Trust Action, AO** resolved by Director
8-17-95	failure to submit RI work plan	Commercial UST	no		resolved by program

*Remedial Investigation

**Administrative order

1994 Total Resolved NOV/AOs: 6, Pending 0

1995 Total Resolved NOV/AOs: 6, Pending 0

source: Kuhn, 1996.

Discovery of Violations. UST release violations can be discovered in a number of ways. They may be discovered and notified to the Corrective Action Program by local or state licensed UST inspectors, equipment tightness testers or service personnel, fire officials, citizen complaints or soil and ground water analytical laboratory sample results submitted for UST closures. Complaints are followed up and verified by either UST Release Prevention or Corrective Action Program staff. On-site soil, water and product samples are collected and sent to analytical laboratories as appropriate. Field activities are documented and photographs are taken when necessary. Most importantly, UST owners/operators are required by law to notify the agency within 24 hours of discovering a tank release.

Procedural violations, such as failure to submit required corrective action plan proposals or field activity progress reports become apparent to the USTCA Program case manager and on the database tracking system, established for each release incident. Corrective Action Program and Petro-Fund personnel routinely visit UST facilities during the cleanup process and will document any violations that are observed.

Significant violations in the USTCA Program are primarily discovered through agency review of confirmed release cases, as shown below.

Violations Discovered (NOVs/AOs), by method, 1994

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Citizen Inspection</u>	<u>Complaint</u>
Commercial (retail)	6	4	0	2	0

Violations Discovered (NOVs, AOs) by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Citizen Inspection</u>	<u>Complaint</u>
Commercial (retail)	5	5	0	0	0
Private business	1	0	0	1	0

10. Considerations in Calculating Penalties. The USTCA Program's enforcement policy contains a penalty calculation matrix which factors background, environmental, economic benefit, gravity-based, and violator-specific components into the determination of a target penalty. The program has a written Enforcement Procedures Guidance Manual developed as part of its EPA grant obligations which provides guidance for penalty calculations. The program's enforcement guidance provides for consideration of the frequency of violations in selecting an appropriate enforcement response. Frequent or continuing violations warrant an increased level of enforcement response. The program uses a formalized UST Corrective Action Program Case Management Priority Ranking Schedule and form to rank facilities for severity of threats to human health and the environmental. Sites which rank as a high priority for case management oversight are also considered high for judicial enforcement. The ranking form is used to objectively evaluate sites for case management priority and judicial enforcement if the owners become recalcitrant.

The proposed draft administrative civil penalty rules for the USTCA Program contains a penalty calculation methodology based on the economic benefit of noncompliance, gravity or seriousness of harm, past compliance history, cooperation, and negligence.

11. Resolution of Noncompliances. All formal enforcement requests must be approved by the Division Administrator and Director prior to the initiation of any formal enforcement action. Program policies are in place that establish how enforcement activities are to progress. Program staff have been instructed as to what informal enforcement efforts are to be made before formal enforcement activities are invoked. Further, the program maintains a database module which cross-references violations with compliance activities. The review of data which has been entered into the module allows program staff to monitor compliance progress and provides program management the capability to periodically review the status of program-wide compliance/enforcement activities.

12. Current Compliance Priorities. Agency staff have identified the following enforcement/compliance efforts as priorities for the Underground Storage Tank Corrective Action program:

- Immediately respond to all UST releases with associated high risks to human health.
This typically includes any known or potential human exposure to contaminated groundwater used as a drinking water supply, human exposure through vapor inhalation, and risks associated with fire and/or explosion due to the buildup of petroleum vapors in confined spaces (utility corridors, crawl spaces, basements).
- Respond to UST releases that threaten the environment or pose a hazard to surface and groundwater not immediately used for drinking water purposes.

Agency staff have identified the following key priorities for their enforcement/compliance program over the next 12 months.

- Adopt rules to implement the draft UST administrative penalty provisions.
- Hire and train new staff.
- Continue priority ranking of new releases and identify human risks posed by releases.
- Establish a cost-recovery program in the LUST Trust Fund to recover federal monies expended at LUST Trust sites. Identify and initiate necessary enforcement activities at these sites.

13. Compliance Relationships with Other Agencies.

Oversight. Montana has received federal program approval from the Environmental Protection Agency for the UST program. This means DEQ has primacy for the regulation of the underground storage of regulated substances in the state of Montana, except within the boundaries of the state's seven Indian reservations. Although program approval has been granted, the EPA will maintain an oversight role to insure that Montana's program operates in a manner which is at least equivalent to federal standards and requirements. The receipt of federal UST Program Assistance Grant and LUST Trust funds also creates quarterly and annual reporting requirements.

Unlike other RCRA programs, the EPA developed the Underground Storage Tank Program to be a "franchise" program. In developing the "franchise" concept, the EPA envisioned that its role would be to assist in the development and support of viable state programs which would totally supplant the federal UST program.

The EPA estimates that the Office of Underground Storage Tanks will cease operation in 2001. Regional EPA offices will pick up some of the national office's duties and responsibilities at that time and continue to provide limited support to state programs. Federal grant oversight requirements require

that the EPA state project office must conduct mid-year and year-end reviews of the program's activities. The program has negotiated a Cooperative Enforcement Agreement with the EPA. Compliance and enforcement activities are reviewed in relation to the annual workplan which is developed as part of the State/EPA Agreement. Records of such activities must be provided for EPA review.

The UST Corrective Action Program is responsible to the EPA for the accountability of the expenditures from the federal LUST Trust funds. For example, there are criteria established, defining appropriate uses for the funds, and there are federal requirements that LUST Trust expenditures be cost recovered from the responsible party whenever possible.

Partnerships. The Underground Storage Tank Program has entered into a Cooperative Agreement with the Assiniboine and Sioux Tribes to jointly regulate underground storage tanks on the Fort Peck Indian Reservation.

By rule, the USTCA Program offers local government units 15 days in which to provide comments regarding proposed corrective action work plans for sites within their jurisdictions. Also, copies of the final corrective action reports are required to be submitted to local governments for review and comment.

Delegated Authority. The USTCA Program has delegated inspection authority to local government units where possible. The state/EPA cooperative agreement provides for this, as does state law. The program utilizes the services of personnel employed by local health departments, fire departments and rural fire districts. The UST Program currently has contracts with 32 local governmental agencies. At the direction of the USTCA Program, these agencies may conduct compliance inspections, take samples, and conduct follow-up inspections for on-going remediation efforts. Individuals who carry out these duties are not licensed by the USTCA Program but typically hold a Remover/Installer License issued by the UST Release Prevention Program.

RECLAMATION DIVISION

The mission of DEQ's Reclamation Program is to administer and enforce Montana's mined land reclamation statutes and facilitate reclamation of abandoned mines. Budget, funding source, and staffing information (pre-reorganization) for Reclamation is provided below.

Funding Source, FY 96

	General	Recl.	Hardrock	Bond ¹	DEQ ¹		Total	
<u>Program/Activity</u>	<u>Fund</u>	<u>Dvlpmnt.</u>	<u>Fund</u>	<u>Forfeiture</u>	<u>EIS</u>	<u>Federal</u>	<u>Funds</u>	<u>FTE</u>
Admin.		\$71,800					\$71,800	1.1
Opencut	69,700	181,300	15,500				266,500	4.5
Coal/Uranium		233,000				819,100	1,052,100	18.4
Aband. Mines						4,932,100	4,932,100	9.0
Hard Rock	341,400	431,500	50,000				822,900	14.4
Env. Analysis					1,329,400		1,329,400¹	3.5
Bond Forfeitures				50,000			50,000 ¹	NA
TOTAL (FY 96)	411,000	917,700	65,500	50,000	1,329,400	5,751,200	NA	50.9
TOTAL (FY 90)	312,900	612,400	100,000	100,000	500,000	8,749,700	10,374,900	42.0

Notes:

1 These accounts reference half of the funding amount for the biennium and not an annual appropriation. They are spending authority only; actual funds are typically available only when a bond has been forfeited or an applicant is submitting MEPA fees for a specific project over the course of the biennium.

sources: Olsen, 1996; LFA, 1995, 1989.

Legislative History

Events important to the compliance/enforcement elements of the Reclamation Program are summarized below.

1967/

1969 Legislation enacted to "encourage" reclamation in Montana. College of Mineral Sciences and Technology authorized to enter into contracts with miners wishing technical assistance with reclamation.

1971 Legislature determines that voluntary reclamation is inadequate and enacts more specific and stringent permitting and reclamation requirements; passes the Metal Mine Reclamation Act (MMRA) and Montana Open Cut and Strip Mine Land Reclamation Act. Legislature also enacts the Montana Environmental Policy Act (MEPA).

1973 Legislature amends the two reclamation acts and splits them into the three current statutes; the Strip Mine Act, the Open Cut Act, and the Metal Mine Reclamation (Hard Rock) Act.

1974 Legislature passes the Montana Mine Siting Act.

1975 Strip Mine Act amended to include underground mining and is retitled as the Montana Strip and Underground Mine Reclamation Act.

1977 Federal Surface Mining Control and Reclamation Act (SMCRA) enacted (applies only to coal).

1979 Montana Strip and Underground Reclamation Act amended to be as effective as the federal coal law.

1980 Montana given federal approval to enforce both state and federal coal law in Montana.

- 1985 MMRA modified to include: annual certification required of small miners; small miners may be assessed penalties for violating conditions of the exemption; provides for writ of mandamus, and action for damages to water supplies; required compliance with Hard Rock Impact Act (administered by the Montana Department of Commerce); and a section regulating custom mills was added.
- 1989 Legislature modified MMRA to require bonds for new placer and dredge operations and require operating permits for small miners using cyanide; establishes procedure for blasting complaints; and identifies activities prohibited if a bond has been forfeited.
- 1991 Legislature modifies the MMRA to:
- . clarify that operators must pay a civil penalty for violations of provisions of any license or permit,
 - . provide for immediate suspension of a permit when a violation is creating an imminent danger to the health and safety of persons outside the permit area,
 - . prohibit areas reclaimed by a permittee, or any state or federal agency from being mined under a small miners' exclusion,
 - . require a permittee to identify directors and owners of more than 10 percent share,
 - . require a permittee to provide a certification of compliance with air and water quality laws, and
 - . authorize the Department to abate environmental emergencies and recover costs.
- 1993 MMRA was amended to require persons to pay outstanding penalties and outstanding reclamation costs, and comply with outstanding compliance orders prior to receiving a small miners exclusion, exploration license or operating permit.
- 1995 MMRA modified to authorize administrative assessment of penalties, increase the ceiling on penalties for significant violations, clarify the steps of the enforcement process, and allow for formal appeal of violations and penalties.

Open Cut Program

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial. The Open Cut Mining Act regulates and requires reclamation of land mined for sand, gravel, bentonite, clay, phosphate rock, and scoria, by any party, on any land (except tribal) in Montana.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Open Cut Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. IX, Sec. 2** notes that all lands disturbed by the taking of natural resources shall be reclaimed, and the legislature shall provide effective requirements and standards for the reclamation of lands disturbed.
- **Montana Open Cut Mining Act (OCMA)** (MCA 82-4-402, et. seq.) provides for the reclamation and conservation of land subject to open cut mining.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)
- **Montana Dam Safety Act** (MCA 85-15-105, et. seq.)

Related federal authorities:

- **National Environmental Policy Act (NEPA)**
- **Surface Mine Control and Recovery Act (SMCRA)**
- **Organic Act and National Forest Management Act** (USFS-administered lands)
- **Federal Land Planning and Management Act** (BLM-administered lands)

Open cut administrative rules:

- ARM 26.4.201-.207

Specific enforcement authority:

- MCA 82-4-441
- ARM 26.4.207

2. Program Goals. Based upon the above-referenced guidance, the Open Cut Program goals are the reclamation and conservation of land subject to mining, as well as the following:

1. Effectively, consistently, and fairly administer the Act by working with industry, landowners and concerned citizens to ensure reclamation while not promoting excessive regulation.
2. Provide and retain technically competent staff who are possessed with exemplary communication skills that allow a free exchange of ideas and who are able to accept or offer alternatively effective reclamation methods or actions.

3. Program Activities. The Open Cut Program is responsible for making mine permitting decisions (approval, denial, or modification) on permit applications, for operation monitoring, and for providing reclamation oversight on all mining of sand, gravel, scoria, clay, bentonite, and phosphate rock. The Open Cut Mining Bureau is organized around a central office in Helena with satellite offices in Billings and Kalispell. Reclamation Specialists in each of the three offices maintain areas of responsibility by region: central, western, and eastern. The Bureau Chief is stationed in Helena and retains most administrative and decision making authority. That position also assists the reclamation specialists in their duties when workload is excessive or issues complex or controversial.

Program resources and demands are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr²</u>
Billings	47,158	1.0	9	819	(see total)	70
Helena	173,236	2.0	18	645	(see total)	60
Kalispell	46,107	1.0	6	718	(see total)	70
TOTAL	\$266,500	3.0	8.5	2,182	14.2³	200

Notes:

- 1 Does not include 0.5 administrative FTE in Helena.
- 2 Refers approximately to last 5 years.
- 3 30,000 total acres under permit, divided by 2,100 permits.

source: Welch, 1995, 1996.

Fees and Charges. Open Cut Program revenues from fees and charges are described below. The amounts of the nonvariable fees are set in statute.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Contract Application Fee¹:	\$50	6,500	bonding shortfalls, research, administration
Additional MEPA Fees:	0	0	NA
Noncompliance Penalties:	varied	6,000-7,000	bonding shortfalls, research, administration
TOTAL:		\$12,500-13,500	

Notes:

- 1 Fees do not apply to state, County, city, or town projects.

source: Welch, 1996.

4. Regulated Communities. Open Cut mining regulations affect those open cut mine operators who remove a cumulative total (at one site or many) of 10,000 cubic yards of material or more. At this level of activity, operations become regulated.

Consistent with the activities noted above, the Open Cut Program interacts with four primary regulated communities: government (primarily counties, but some cities and federal and state agencies), fixed-base operators, highway contractors, and bentonite miners. Additional information on those regulated through the Open Cut Mining Program is provided below.

At least one open cut mining operation exists in each of Montana's 56 counties, from low-elevation alluvial deposits, to high elevation glacial areas, to the bentonite fields of eastern Montana. Operations range in scale from 1 acre to over 1,000 acres in size. The total permitted acreage remains relatively constant over the years, with new operations' acreage replacing acreages released from bond.

Approximately 5% of the Open Cut contracts are for operations on federal lands, 5% are for operations on state lands, and 90% are on private lands. Approximately 25% of open cut operators are mining their own land; the remainder have received permission from the landowner.

The duration of an operation mined in conjunction with a specific highway project is typically 3-4 years; permanent based operations may last from 5-50 years. Most operators have 2-3 active operations at a time; the largest operator has 15 concurrent operations. A number of larger highway contractors have up to 60 operations at some stage of development or reclamation.

5. Philosophical Approach to Compliance. Program staff strive to maintain consistent, fair administration, together with a commitment to serve the regulated and non-regulated community; they offer solutions when possible, and enforcement when necessary. The program's primary goal is the reclamation of mined land; communication, cooperation, and trust often bear the most fruit. Legal actions are also a tool, but they should be the ones used least frequently and usually when environmental harm is effected and/or the violation shows irresponsible negligence.

6. Compliance Tools Available and Used. The Open Cut Program's formal inspection and enforcement procedures are documented in their *Policy and Procedures Manual*, in place since 1987, and last revised in 1990 with the addition of form changes. Other changes in document preparation have taken place periodically. The menu of tools used by the Open Cut Program to achieve their natural resource/environmental mandates is shown beginning on the next page. Abbreviations used in the "Authority" column refer to the following:

Admin.	Division Administrator
Bur. Chief	Bureau Chief
NA	Not Applicable
recl. spcl.	Reclamation Specialist
Legal staff	Member of DEQ Legal staff
NR	Not Recorded

7. Incentives for Compliance. According to program staff, the strongest incentives for compliance with Open Cut regulations are agency-generated, because none of the operators "enjoy" receipt of NOV's and civil penalties, even though the penal amount may seem insignificant. They feel that there are a certain number of operators who would comply and do an excellent job of reclamation without government monitoring. For some however, even though not necessarily correct, they feel compliance costs money and they lose any economic advantage for the bid process and/or profit.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- OPEN CUT MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: Presentations at gatherings Informal Discussions w/Equipment Operators Informational Packet On-Site Technical Assistance	On request and/or when resources are available; presentations have been made to contractors associations, County road foremen, and the Highway Department. Upon request; done individually or in groups, often in winter months. Ongoing process. Issued upon request. Includes relevant forms, as well as assistance handouts related to plans of operation, ponds, seed mixes, bonding levels, and mapping. Many opportunities to provide on-site technical assistance occur during inspections, and these opportunities are taken advantage of.	recl. spcl. recl. spcl. NA recl. spcl.	2 NA NA NA
Comp. Planning/Withdrawals: (None noted)			

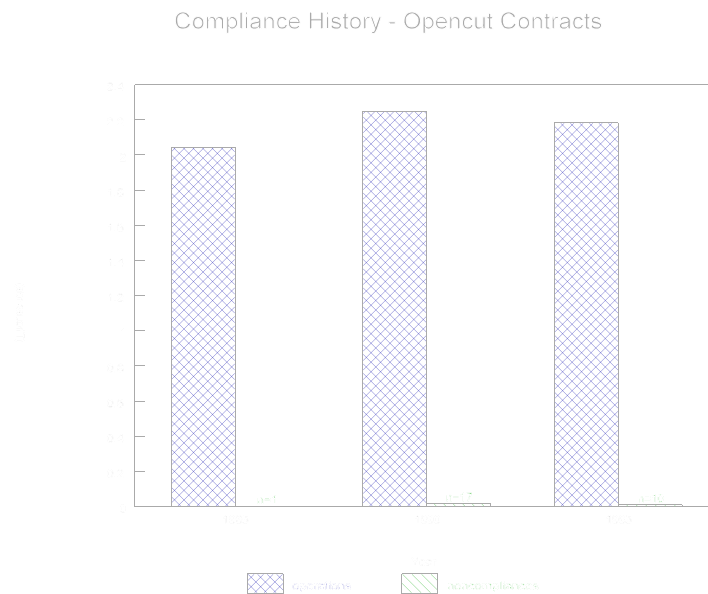
STATE COMPLIANCE/ENFORCEMENT TOOLS -- OPEN CUT MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certif./Bonds (cont.): Reclamation Plan Revision	Allowed (by statute) to occur annually, but should only be done if the old plan is so inadequate that reclamation is in jeopardy or the operation has changed from the original proposal. Department may periodically review the mining and reclamation and require modifications as necessary.	Admin.	142
Bond Revision	Adjusted at request or by staff as necessary.	recl. spcl.	NR
Contract Amendments	Upon department approval; they typically cover 0-50 acres.	Admin.	45
Monitoring/Inspections: Informal (news, conversations) Self-Monitoring by Permittee	Performed continuously on ad hoc, time-as-available, basis. Monitoring (water quality and fluctuations generated by the project) and annual reports are required for sites operated in the calendar year.	NA NA	NA 10
Full-Site Inspections	Authorized, but no required frequency; policy targets pre-mine, initial start-up, operating, and reclamation. Inspections may occur without notice to operator. They include evaluations of consistency with operation plans, whether the bond is still sufficient, and whether the reclamation plan is still valid. Some inspections are more intensive than others, but such differences are not tracked in program records.		
Complaint-Generated Insp.	All complaints are responded to as time and potential harm dictate. There are not any rules that require time frames for response.	recl. spcl.	±500
Correction of Problems (Violation Avoidance)	If staff notice minor problem which is immediately corrected.	recl. spcl. recl. spcl.	NR NR
Administrative Notices/Orders: Post-Inspection Letter	These are informal, agency-generated letters that detail observations potentially leading to a violation. They are sent to an operator after inspection, if problems are discovered, and include steps necessary to correct them, and a time frame to do so.	recl. spcl.	NR

STATE COMPLIANCE/ENFORCEMENT TOOLS -- OPEN CUT MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: Staff Recommendation - NOV Notice of Violation/Proposed Penalty (NOVPP) Opportunity for Hearing NOVPP Modification Penalty Waiver Findings of Fact/Conclusions of Law and Order (FFCLO) Release of Civil Liability Bond Forfeit Contract Termination	<p>Upon staff determination of environmental harm, or a pattern of singular minor violations, or recurring or unabated administrative violations.</p> <p>Must be issued within 30 days of operator receipt of NON (includes "points" calculation for violation and amount of proposed penalty) NOVPP is prepared by legal staff; Bureau Chief recommends penalty amount.</p> <p>A formal or informal hearing must be requested by operator within 20 days of receipt of NOV. Hearing results in NOV being either affirmed, modified, or vacated. Following informal conference or formal hearing.</p> <p>Only where violation is minor and no harm to public health, safety, or the environment has occurred, and administration has not been impaired.</p> <p>(orders operator to pay penalty) Issued within 30 days of receipt of NOV, <u>if</u> no hearing is requested. Penalty must be paid within 30 days of receipt of FFCLO.</p> <p>Upon receipt of penalty payment, or issuance of Penalty Waiver.</p> <p>Upon failure to reclaim in accordance with Mining and Reclamation Plan.</p> <p>Upon mutual consent or 6-month notice to operator prior to termination.</p>	<p>staff</p> <p>Admin.</p> <p>Admin. Bur. Ch</p> <p>Legal Stf</p> <p>Legal Stf Legal Stf Admin. Admin.</p>	<p>12</p> <p>±10</p> <p>0 0</p> <p>7</p> <p>4 2 1 1</p>
Civil Judicial Action: Court Adjudication Suit to Enjoin Suit to Collect Damages (breach of contract)	<p>If operator does not pay penalty.</p> <p>Upon failure of operator to cease mining 30 days after being ordered to do so.</p> <p>May occur at the department's discretion upon operator failing to cease mining 30 days after being ordered to do so.</p>	<p>Admin.</p> <p>Admin.</p> <p>Admin.</p>	<p>0</p> <p>0</p> <p>2</p>
Criminal Judicial Action: (Not authorized)			

8. History of Compliance. Generally, operators comply with open cut regulations, especially those who have been in the business for a number of years and/or operate multiple sites in response to road construction projects. There are, however, a large number of new open cut operators taking part in the increasing commercial, residential, and infrastructure development in many areas of the state. With many of these operators, the process becomes one of education. In some cases, there is adamant objection to compliance to any degree with mining regulations; these are more difficult cases to bring into compliance. Often the only tool that will work is that of the Notice of Violation and concurrent civil penalties.

The Open Cut Program generally issues 12-15 violations annually. To date, the program has forfeited 26 bonds, most due to financial difficulty situations (i.e. bankruptcy).

Trends in compliance with open cut rules and requirements are illustrated below. As shown, the number of contractees has remained relatively constant, and the number of noncompliances has remained relatively low. As shown in this figure, there were over 2,000 contractees in 1985 and one



noncompliance; in 1990, there were over 2,200 contractees and 17 noncompliances; and in 1995, there were about 2,200 contractees and 10 noncompliances. Program staff feel that both numbers and types of violations are stable. They note that it is possible that with the increasing number of operators supplying subdivision and infrastructure development, that some will be reluctant to comply with applicable mining and reclamation statutes.

9. "Violations." As noted in the "tools" table, open cut operators may be out of compliance, but if they correct the situation, they may not be issued a violation nor be penalized. The Open Cut Program defines a "violation" upon issuance of a Notice of Violation (NOV). Significant violations are defined as those which can not be waived.

During the 1995 calendar year, the Open Cut Bureau issued 10 NONs. There was one repeat violator in that time period. Both violations were for failure to enter into a Mined Land Reclamation Contract prior to commencing mining operations. The CY 95 list of open cut violations follows:

<u>Month NON Issued</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>1995 Open Cut Violations, by Type and Status</u>		
			<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u>
Jan. '95	sand & gravel	No contract	\$400	unpaid	Y
Jan. '95	sand & gravel	No contract	\$400	unpaid	Y
Jan. '95	sand & gravel	No contract	0	vacated	N
Feb. '95	sand & gravel	No soil salvage	\$400	Released	Y
Feb. '95	sand & gravel	No contract	\$450	unpaid	Y
Mar. '95	sand & gravel	No contract	0	vacated	N
Mar. '95	sand & gravel	No soil salvage		unpaid	
		failure to reclaim	\$1,000	bnd forfeit	Y
May '95	sand & gravel	failure to reclaim	0	vacated	N
Oct. '95	sand & gravel	No contract	\$400	unpaid	Y
Oct. '95	sand & gravel	No contract	\$400	unpaid	Y

source: Welch, 1996.

Discovery of Violations. All violations in the Open Cut Program are discovered through inspections as shown below.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Open Cut Miners	10	0	0	10	0

source: Welch, 1996.

10. Considerations in Calculating Penalties. The Open Cut program uses a "point" system to assess civil penalties. Points are assigned based on history, seriousness, negligence, and good faith, as described below.

1. **Operator's History of Noncompliance (no maximum number of points):**
 - A. Four points for each similar violation (i.e. soil salvage, failure to reclaim, etc.) in last three years.
2. **Seriousness of Violation (max. = 18 points; includes actual and/or potential harm):**
3. **Negligence (max. = 18 points):**
 - A. Ordinary Negligence (max. = 4 points),
 - B. Irresponsible Negligence (max. = 8 points),
 - C. Gross Negligence (max. = 18 points)
4. **Good Faith (potential of 8-point maximum credit)**

The Bureau's manual provides guidance in calculating points. Penalty amounts are \$50 (1996) per point, with a minimum of \$100, and maximum of \$1,000, per day. A "day" is a day the action occurred that resulted in the violation (i.e. failure to submit a report is a one-time occurrence, thus is considered one day of violation, even if it takes two weeks to correct). Penalties for subsequent days that the violating activity occurs are assessed at the same rate.

11. Resolution of Noncompliances. There is no data recorded in this category, but as noted on previous pages, most violations are for operating without a contract, failure to reclaim, or failure to salvage soils. Usually the violator secures a contract, reclaims or has a bond forfeited, and begins to salvage soils correctly and/or corrects other problems.

12. Current Compliance Priorities. Agency staff have identified the following short-term priorities for the Open Cut Program:

- Increased presence on site at critical times such as soil salvage operations and during reclamation activities.
- Continued attempts to inform operators of methods and philosophy.

13. Compliance Relationships with Other Agencies.

Oversight. None

Partnerships. The Open Cut Program maintains an MOU with the Forest Service; under the MOU, the Forest Service handles their own sites, but if a private operator wants to begin open cut mining on Federal land, the state program handles it.

Upon receipt of a complete Application for a Mined Land Reclamation Contract, copies of the Application are sent to the State Historic Preservation Office (SHPO), to the land owner, and to the responsible weed district. Applications are also sent to the Montana Natural Heritage Program for a file search of sensitive plant and animal species recorded in the area of interest. This input is incorporated into Environmental Assessments (EAs) and potentially into modifications to Plans of Operation and Reclamation.

The Pre-Mine Site Evaluation includes a review of potential historic and wildlife resources. Both SHPO and the Department of Fish, Wildlife & Parks are notified if the reclamation specialist notes potential significant resource values related to the proposed mine site.

Delegated Authority. None (other than MOU with U.S. Forest Service).

Coal and Uranium Program

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial of development. Coal and uranium mining regulations include provisions for permit revocation for a pattern of violations. This is the most stringent of the regulatory provisions. Furthermore, enforcement is primarily mandatory, with very little discretion whether or not enforcement is initiated.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Coal and Uranium Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. IX, Sec. 2** notes that all lands disturbed by the taking of natural resources shall be reclaimed, and the Legislature shall provide effective requirements and standards for the reclamation of lands disturbed.
- **Montana Strip and Underground Mine Reclamation Act (MSUMRA)** (MCA 82-4-201, et. seq.) provides for permitting, reclamation, and enforcement of coal and uranium mining.
- **Montana Strip and Underground Mine Siting Act** (MCA 82-4-101, et. seq.) provides for permitting, reclamation and enforcement of preparatory work for new coal mine development.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)
- **Montana Dam Safety Act** (MCA 85-15-105, et. seq.)

Related Federal authorities:

- **National Environmental Policy Act (NEPA)**

- **Surface Mine Control and Reclamation Act (SMCRA)**
- **Organic Act and National Forest Management Act** (USFS-administered lands)
- **Federal Land Planning and Management Act** (BLM-administered lands)
- others (Federal Clean Air Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, etc.)

Coal and Uranium Administrative Rules:

- ARM 26.4.301-.327; 26.4.401-415; 26.4.501-.524; 26.4.601-.652; 26.4.701-.763; 26.4.801-.837; 26.4.901-.932; 26.4.1001-.1017; 26.4.1101-.1148; 26.4.1201-.1263; 26.4.1301-.1309; 26.4.1802-.1830

Specific enforcement authority:

- MCA 82-4-205(1), 82-4-251, and 82-4-254
- ARM 26.4.1201-1220
- SMCRA (state enforces federal law)

Primacy and Jurisdictional Agreements:

- Permanent Program Approval
- Cooperative Agreement (on federal lands)
- Applicant Violator System MOU (permit blocking for violators nationwide)
- Ceded Area MOU: regulation on off-reservation lands with tribal coal

2. Program Goals. Based upon the above-referenced guidance, the Coal and Uranium Program has identified the following program goals:

1. Administer and enforce the Montana Strip and Underground Mine Reclamation Act, the Montana Strip and Underground Mine Siting Act, the Montana Environmental Policy Act, and their respective administrative rules, to the extent provided by law, to allow mineral development while protecting the environment.
2. Administer and enforce a reclamation program which complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.
3. Administer the law in a fair and unbiased manner.

4. Maintain and improve Montana's clean and healthful environment for present and future generations.
5. Protect environmental life-support systems from degradation.
6. Provide for the orderly development of coal resources, through strip or underground mining, to assure the wise use of the state's resources and to prevent the loss of coal resources through coal conservation.
7. Prevent undesirable land, surface and groundwater conditions detrimental to general welfare, health, safety, ecology, and property rights.
8. Prevent unreasonable degradation of Montana's natural resources.
9. Restore, enhance and preserve Montana's scenic, historic, archaeologic, scientific, cultural, and recreational sites.
10. Achieve effective reclamation of all lands disturbed by the taking of coal or uranium.
11. Maintain state administration of the coal mining regulatory program.
12. Strive to make permitting decisions in a timely manner.
13. Promote effective, efficient and economic program management.

3. Program Activities. In general terms, staff effort is divided between 70% permitting and 30% inspection and enforcement, but many enforcement actions involve permitting actions as well. Budgeting is not directly driven by this percentage. These activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retntn.²</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/Site³</u>	<u>Avg. # of new proj./yr²</u>
Permitting	\$712,200	12.9	5.3	10 permitting 12 bond release	NA	5
Insp./Enforcement	\$320,000	5.5	5.3	16 violations 17 inspection units	NA	15 (violations)

Notes:

- 1 Includes .5 FTE administrative; 1 FTE attorney; 1 FTE Bureau Chief; .5 FTE Administrator; 1 FTE secretary.
- 2 Refers approximately to last 5 years; Also, staff retention is typically driven by market conditions for discipline-specific positions. Managers and supervisors remain in positions approximately 10 years or more; engineers 1-3 years; hydrologists and geologists 2-8 years; biologists 3-5 years, soil scientists as much as 8 years.
- 3 As of February 1996, approximately 61,000 acres of coal mines were permitted in Montana.

source: Lovelace, 1995, 1996.

Fees and Charges. By statute, Coal and Uranium Program revenues from fees and charges are deposited into the General Fund. The amounts of the nonvariable fees are set in statute. Civil penalties are assessed based on a point system. Additional information on fees and charges is presented in the table on the next page.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:			
Prospecting Applications	\$100	\$100	General Fund
Major Revisions	\$100	\$400	General Fund
Amendments	\$50	\$100	General Fund
Renewals	\$0	\$0	NA
New Mine Applications	\$100	\$100	General Fund
Additional MEPA Fees:	varied	varied	EIS Preparation
Noncompliance Penalties:	varied	approx. \$10,000/year	General Fund
TOTAL:		\$10,700	

source: Lovelace, 1996.

4. Regulated Communities. The coal community is described below.

There are seven major coal development companies active in Montana; most are located in the southeastern portion of the State. Of these, one company holds six permits, other companies hold one or two permits. Sizes of active mines range from 857 acres to over 20,000 permitted acres. Surface mined coal is typically extracted via dragline or shovel, processed on site, then shipped to other locations via rail. The typical production life of a coal mine averages 20+ years.

There is currently no uranium mining in Montana; restrictions on deposition of radioactive substances in 75-3-303, MCA limit the mining methods which can be used in Montana.

Prospecting/exploration activities in Montana are generally conducted by mine companies operating in the state and typically address continued mining as an expansion of existing mines. New area prospecting, while it occurs, is limited.

5. Philosophical Approach to Compliance. Based on program staff interpretation of legislative history, the department philosophy is that coal mining in Montana is intended to be regulated, not prohibited. Staff feel that permit conditions and regular inspections are very effective in promoting compliance. Additionally, the blend of individuals knowing both permitting and on-the-ground provisions is highly effective in preventing noncompliance. As staff share information from mine to mine and stay current with the best technology currently available, many technical assistance opportunities occur. Staff try to head off violations through effective permit conditions, knowledge of potential problems, technical assistance, frequent site inspections, and familiarity with permit conditions. They do not hesitate, however, to issue a violation when one is discovered and cannot be corrected while the inspector is on-site.

6. Compliance Tools Available and Used. The Coal Program's formal inspection and enforcement procedures are documented in its *Policy and Procedures for Inspection and Enforcement*, in place since 1991, and last revised in 1995. Inspection kits have been used since the beginning of the program. These kits include field maps, mine-specific conditions lists, discipline-specific inspection procedures, and general processing procedures. Air quality inspection guidelines were formalized in a manual in 1994, which is available for the inspectors to use. The menu of tools used by the Coal and Uranium Program to achieve their natural resource/environmental mandates is shown beginning on the next page. Abbreviations used in the "Authority" column refer to the following:

Director	Agency Director (DEQ)
Div. Adm. or Adm.	Division Administrator
Bur. Chief	Bureau Chief
Attorney	Department Staff Attorney
Cty. Att.	County Attorney
Cmpl. Spc.	Compliance Specialist (Administrative, in charge of tracking system)
NA	Not Applicable
I/E Sup.	Inspection and Enforcement Supervisor
staff	program technical staff
inspectors	staff members charged with carrying out inspections

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: Public Access to Unavailable Lands Inventory On-site Technical Assistance Technical Seminars	The public may review maps of "unavailable lands" (see below) in program files. Also, "Alluvial Valley Floor" delineations are accessible through the Natural Resource Information System (NRIS) at the State Library. Many opportunities to provide on-site technical assistance occur during inspections, at meetings between industry and state, and at professional symposia. When the program contracts specialized training, industry is typically invited to attend.	NA staff staff	NA NA NA
Comp. Planning/Withdrawals: Determination of Lands Unavailable for Coal Mining (3 types): - "Unsuitable" Lands - "SECU" Lands - Alluvial Valley Floors	(Note: In addition to the items listed below, other factors, including proximity to a public road, private dwelling, park and/or historic site can affect the mining availability of lands within permit boundaries.) Any citizen may petition the Department to declare lands (public and/or private) "unsuitable" for coal mining, if applicant can demonstrate a current or expected "injury" due to coal mining). Since 1`980, the Department has received 1 petition which was denied; no lands have been designated as "unsuitable for mining." Prospecting is allowed on such lands, if it will not interfere with the values supporting the designation. Lands may be designated "Special, Exceptional, Critical or Unique" (SECU) if provisions of 82-4-227 MCA are met, and may be initiated via petition or Department analysis. An analysis of potential SECU lands is done for every permit application. In 1974, the Department received a petition to designate SECU lands (20 acres near Harbin). The petition was granted on the basis of the area being critical mule deer winter range. Prospecting is prohibited on SECU lands. "AVF" determinations are made by on a site-by-site basis, with initial information provided by the applicant and/or requested by the Department, during the permit application phase. The term refers to unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. Since 1978, there have been 24 requests for "AVF" determinations, six of which were determined to be significant alluvial valley floors.	Bur. Chief Bur.Chief Bur. Chief	None None None

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certifications/Bonds:			
Notice of Intent to Prosect	Required for prospecting activities that will not substantially disturb the land surface; no bond is required.	staff	2
Prospecting Permit	Required if proposal would substantially disturb the land surface; a bond is required.	Div. Adm.	5
Mining Permit:	Issued upon approval of Operating Plan and related contingencies. Permits must be renewed at 5-year intervals. Coal removal must commence within 3 years of permit issuance. Permits are transferable upon Department approval. (Note: permits, amendments, and major revisions require federal concurrence if federal land involved.)	Director	None
- Minor Revision	Required for proposed modifications to schedules, monitoring plans, operating practices, etc.; granted if the proposal is in compliance with regulations.	Bur. Chief	162
- Permit Amendment	Required to add or subtract acreage from an existing mine permit area; granted upon approval of amended Operating Plan and any related contingencies.	Director	1
- Major Revision	Required for significant change to Operating Plan (with no acreage change); granted upon approval of revised Operating Plan and any related contingencies.	Director	2 ¹
- Permit Renewal	Required every 5 years; granted if no successful objections to renewal.	Director	4 ⁴
Opportunity for Public Comment	Public notices and opportunity for comment occur at every major phase of the permitting process, including: notice of administratively complete process along with notification to local government; notice of acceptability (technically sound application); objection opportunities and informal conference requests; MEPA compliance notices, scoping, hearings; Notice of Decision and opportunity to object, hearing opportunity.	NA	NA
Permit Denial	A permit will be denied if the application is incomplete, inadequate or includes unsound technology.	Director	None
Renewal Denial	If objector is successful in proving that finding necessary for permit renewal cannot be made. Also, if applicant has severe enforcement history, or has severely out-dated reclamation technologies. Since 1986, there have been three challenges, resulting in one denial.	Director	None
Mining Commencement Extension	Extension of the requirement to commence mining within 3 years of permit issuance is granted if applicant proves that litigation precludes commencement or threatens significant economic loss, or other reasons beyond the control of the permittee. Since 1984, there have been four requests, three of which were granted.	Director	None

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certifications/Bonds (cont.):			
Approval of Permit Transfer	Transfer, sale or assignment is granted if all permit terms will be met, the transferee is not prohibited from holding a permit, if adequate bond (retroactive to beginning of permit) is posted. Since 1984, 15 transfers have been requested, of which 11 were approved, three were withdraws and one was denied.	Div. Adm.	3 ²
Bond	Required to obtain and maintain a prospecting or mining permit; bond may be a surety, cash, or letter of credit. Bond amount calculated based upon what actual cost would be for state to reclaim disturbed land; there is no maximum bond amount.	Div. Adm.	20
Blaster Certification	Required for any mine personnel conducting blasting operations; requires training, testing and experience. Certification is good for three years. As of the end of 1995, there were 50 certified blasters in Montana.	Div. Adm.	34
Mid-Year Permit Review	Department review required midway (or sooner) through the 5-year permit term. Items reviewed include use of best technology currently available, success of reclamation, and effectiveness of on-the-ground practices. The review may result in permit modifications to address any deficiencies or needed upgrades.	staff	6 ¹

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections: Informal (news, conversations) Review of Permittee Reports: - Annual Reports - Specific Monitoring Reports Full-Site Inspections: - Quarterly Partial/Specific Inspections: - Prospecting Inspections - Complaint-Generated Insp. - Abatement Inspections - Bond-Release Inspections Tracking of Maintenance Items On-Site Correction of Prob. (Violation Avoidance)	Performed continuously on ad hoc, time-as-available, basis.	staff	NA
	Required to document mining progress, reclamation progress, land disturbed and plans for next year; submittal triggers review.	staff	21
	Required annually or semi-annually for all disciplines, including; hydrology, wildlife, revegetation work, blasting, soil/spoil quality, pond certifications. Receipt triggers review.	staff	±126
	Required for active and inactive mines; inspections are to occur without notice (except for necessary meetings) on an irregular basis, and scheduled to detect violations (i.e. weekends, nights, etc.).	inspectors	112 ³
	Required monthly for active mines; inspections are to occur without notice (except for necessary meetings) on an irregular basis, and scheduled to detect violations (i.e. weekends, nights, etc.).	inspectors	111 ⁴
	Performed as necessary to enforce MSURMA, rules and permit; no specified frequency but linked to specific activities, such as; cultural resources, hole-plugging, etc.	inspectors	2
	Upon receipt of signed statement alleging violations or imminent danger, and Bureau decision to conduct subsequent inspection. (Bureau must respond to complainant within 10 days as to action taken; citizen may accompany inspector to site.)	inspectors	3
	Follow-up of violations is necessary to verify abatement of orders prior to approval of Release from Liability or Termination of Abatement.	inspectors	5
	To inspect regrading, soil replacement, revegetation and reclamation efforts prior to approval of bond release (applies to prospecting and mining).	supervis.	±18
	Involves notation of potential problem areas while on-site and tracking efforts to address.	inspectors	NA
	If problem is corrected while inspector is on-site, resource has not been lost, and specific provision is not violated.	inspectors	173 items

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders: Notice of Non-Compliance (NON)/Order of Abatement(OA) Operator Response to NON Inspector Response to Operator (may include NOVPP, or): - Adjustment to OA Timeframe - Modification of NON/OA - Opportunity for Hearing - Order to Vacate (rescind NON) Termination of Abatement Pattern of Violations/ Show Cause Order	<p>Upon identification of violation; typically occurs in the field. Allowed abatement period is typically 30 days; abatement <u>must</u> be completed within 90 days.</p> <p>Within 15 days of receipt of NON, operator may file statement of the number of days of violation and a description of mitigating circumstances, or denial of violation. Required; must include whether NON will stand as written, be modified or be vacated.</p> <p>Must be requested within abatement Timeframe; basis for need must be identified. If necessary to correct a mistake, or to revise the required abatement due to new information.</p> <p>Must be requested by operator within 30 days of receipt of NON. Hearing results in NON being either affirmed, modified, or vacated.</p> <p>If violation issued in error, or permit condition was not clear.</p> <p>Upon documentation that abatement is complete.</p> <p>"Pattern" <u>may</u> be determined upon two violations by same operator (at same site) in 12-month period, and <u>must</u> be determined if three same or similar violations in 12-month period. Determination of pattern results in Order to Show Cause why permit should not be revoked. Order requires operator to demonstrate they can address problems, and includes opportunity for a hearing.</p>	<p>staff</p> <p>permittee inspector</p> <p>Bur.Chief</p> <p>Bur.Chief</p> <p>Adm./Att. Div. Adm. staff</p> <p>Bur. Chief</p>	<p>15</p> <p>13 9</p> <p>2</p> <p>3</p> <p>1 2 12</p> <p>1</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: Notice of Violation/Proposed Penalty (NOVPP)	Must be issued within 30 days of operator receipt of NON; includes "points" calculation for violation and amount of proposed penalty. Penalty may be waived if no seriousness points are issued.	Bur. Chief Div. Adm.	14 1
Penalty Waiver Opportunity for Conference/ Hearing	Must be requested by operator 50 days after receipt of NON (Same as 20 days after NOVPP). Informal Conference results in NOVPP being either affirmed, modified, or vacated. A new conference may occur if NOVPP is modified. (Note: An informal conference is a meeting between Department and Company to exchange information on the violation. If the violation goes to a formal hearing, it is a contested case hearing. Further, if the violation includes cessation of operations, the hearing is a public hearing held in the vicinity of the mine.)	Div. Adm.	10
NOVPP Modification	Issued if something was incorrect, there is new information, or a need to change the penalty. (see above)	Bur. Chief Adm./Att.	1 None
- Opp. for Hearing on Mod. Findings of Fact/Conclusions of Law and Order (FFCLO)	Issued within 60 days of receipt of NON, <u>if</u> abatement is complete, <u>and</u> no hearing is requested. Penalty must be paid within 30 days of receipt of FFCLO. Upon receipt of penalty payment, or issuance of Penalty Waiver.	Bur. Chief I/E Sup.	12 12
Release of Civil Liability Cessation Order (CO)	Upon identification of a violation involving imminent danger to public health and safety or the environment; upon failure of an operator to abate an existing violation; upon prospecting or mining activities being conducted without a permit.	staff	None
- Operator Response to CO	Within 30 days of receipt of CO, the operator may request an informal public hearing (a "formal" hearing must be requested within 20 days), file written statement of number of days of violation and mitigating circumstances, or deny the violation. The agency may vacate, modify or affirm (same as for NOVPP, above).	NA Adm./Att.	None None
- Agency Response to Operator - Opportunity for Informal/ Formal Hearing	Hearing must be requested by operator within 20 days (for formal hearing) of receipt of CO. Hearing results must include whether CO will stand as written, be modified, or be vacated. As with a NOVPP, a formal hearing is a contested case hearing.	Div. Adm.	None
Permit Suspension	A permit may be suspended for major infractions such as a pattern of violations; OR failure to meet a major requirement, such as not maintaining a reclamation bond in place, or not having right of access.	staff	None

STATE COMPLIANCE/ENFORCEMENT TOOLS -- COAL AND URANIUM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: (cont'd.)			
Permit Revocation	Upon a demonstrated "pattern of violations" (as described above) AND permittee fails to show cause why permit should not be revoked; OR upon determination that a major permit flaw exists.	Director	None
Permit Termination (Expiration)	If coal removal has not commenced within three years of permit issuance and no extension in time period has been granted.	NA	None
Bond Forfeiture	Bonds are forfeited for performance of reclamation by the state; typically this is necessary for major violation of performance standards.	Bur. Chief	1
Entry into Federal Applicant/ Violator System (national permit blocking)	Permits are blocked in this system for unresolved violations and cessation orders. Permits and their owners and controllers for which bonds have been forfeited are entered into the system.	Cmpl.Spc.	1
Individual Civil Penalties	Can be issued to any corporate representative of permittee willfully involved in a violation, <u>if</u> a CO has been issued, <u>and</u> the CO has been unabated for 30 days.	Bur. Chief	None
Civil Judicial Action:			
Court Adjudication	When administrative relief is exhausted and violations are unresolved.	Attorney	12 ⁵
Criminal Judicial Action:			
Misdemeanor Charges	Misdemeanor charges may be filed for willful violations, knowingly making false statements, or willfully resisting, preventing, impeding or interfering with the department in the performance of duties: fines of \$500 to \$10,000, prison terms to one year.	Cty. Att.	None ⁶

Notes:

¹ Initiated, and in progress, in 1995.

² Three other 1005 requests for permit transfer were withdrawn.

³ This was 42 more full inspections than were required in 1995.

⁴ This was 1 less partial inspections than were required in 1995; however, excess complete inspections are counted as partials.

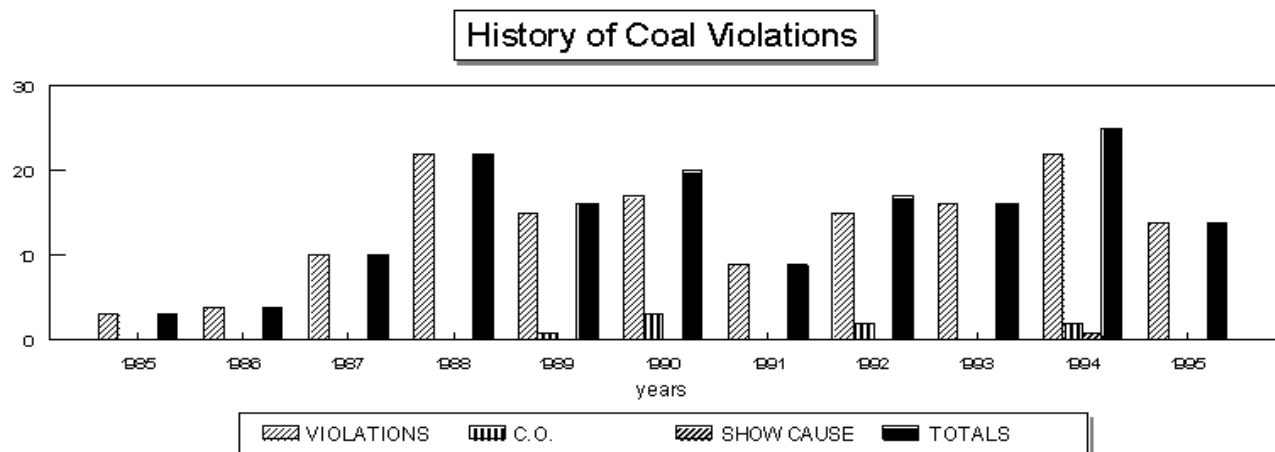
⁵ Eleven of these were ongoing in 1995. One was initiated in 1995.

⁶ Several years ago an attempt was made to prosecute a case, however, the county attorney would not proceed because the action had already been prosecuted as a civil matter. One ongoing investigation is pending at this time.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with coal and uranium rules and regulations are: 1) violation provisions which define a pattern of violations which may result in permit revocation, 2) an escalating process of violation processes (violations, cessation orders, suspensions, revocations), and 3) enforcement which occurs on-the-ground. Additionally, due to a nationwide tracking system for violators of coal mining regulations which directly blocks violators from obtaining permits if violations have not been resolved, permittees are likely to resolve violations more readily. Such permit blocks, tracked in a nationwide system, affect major corporate activities such as buying and selling mines, thus making compliance a highest priority, not a choice.

8. History of Compliance. Trends in compliance with Coal and Uranium Program rules and requirements are illustrated below. Over the last 10 years, violations have been issued at about a typical rate of 10 to 25 violations per year. Few Cessation Orders or Show Cause orders are issued. Cessation orders are typically issued to operations which are not operating and are not maintaining reclamation bonds. The only show cause order ever issued by the program was issued to Western Energy Company and was resolved.

9. "Violations." As noted in the "tools" matrix, coal and uranium operators may be out of compliance, but if the problem can be corrected in the field and no resource was lost (such as soil lost to runoff), they will not be issued a violation nor penalized. The Coal and Uranium Program defines a violation on issuance of a Notice of Noncompliance (NON). "Major or Significant" violations would be issued Cessation Orders and would meet the definition of imminent harm or other criteria described above.



As shown in the table below, the Coal and Uranium Bureau issued 16 Notices of Noncompliance (NONs) and no Cessation Orders (COs) in 1995. No NONs were issued to prospecting operations; 16 were issued to mining operators. Two of these violations were vacated. Of the NONs issued in 1995, there were two repeat violators in that time period, one with two violations, and another with seven. As shown for 1995, violations are typically of a few types: 1) actual on-the-ground violations which require equipment to perform work, 2) monitoring or reporting violations, 3) practice or method violations which require a revision to the permit to implement the practice, and 4) the violations which cannot be abated because a resource was lost or data was not collected.

Discovery of Violations. Over the long term, most violations in the Coal and Uranium Program are discovered through on-the-ground inspections. Many others are discovered through review of monitoring reports, both monthly and annual, as shown below.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Mines	15	9	1	4	1
Prospecting	0	0	0	0	0
TOTAL	15¹	9	1	4	1

Notes:

¹The following table shows 16 total violations in 1995, one more than listed here. The violation was a bond forfeiture and failure to reclaim violation, the program staff did not feel fit into any of the categories in this table.

source: Lovelace, 1996

1995 Coal Violations, by Type and Status

Month NON Issued	Type of Operator	Description of Violation (points assessed¹)	Penalty Assessed	Status at Year End	Significant Violation?
<u>Pending in 1995²:</u>					
June '85	Operator	Unacc. Sedim. Ctr. Struct. (20 pts.)	12,400	pending	Yes
July '85	Operator	No Annual Rept/Unabated (13 pts.)	8,060	pending	Yes
July '85	Operator	No Permit to Construct (28 pts.)	24,800	pending	Yes
Aug. '86	Operator	Sediment Overflow (15 pts.)	9,300	pending	Yes
May '87	Operator	Failure to Maint. Sed. Traps (40 pts.)	62,000	pending	Yes
May '87	Operator	No Pond Cert. Reports (26 pts.)	18,600	pending	Yes
May '87	Operator	No Ann. WQ Mon. Repts. (26 pts.)	18,600	pending	Yes
June '87	Prospector	No Prospecting Permit (no pts.)	15,000	pending	Yes
June '88	Operator	No Permit to Mine (55 pts.)	127,500	pending	Yes
Aug. '90	Operator	Inadequate Sed. Control (43 pts.)	2,300	pending	Yes
Aug. '90	Operator	Inadequate Sed. Control (41 pts.)	2,100	pending	Yes
July '91	Operator	No bond, permit, or recl. (55 pts.)	127,500	pending	Yes
Sept. '91	Operator	Failure to Reclaim (55 pts.)	\$3,500	pending	Yes
July '92	Operator	Unperm. Sed. Deposit. (21 pts.)	420	pending	Yes
Sept. '92	Operator	Poor Site Security (55 pts.)	127,500	pending	Yes
July '93	Operator	Degr. of Soil/Sed. Overfl. (19 pts.)	380	pending	No
June '94	Operator	Imminent Danger (55 pts.)	127,500	pending	Yes
July '94	Operator	Failure to Abate CO (55 pts.)	127,500	pending	Yes
Oct. '94	Operator	Inadeq. Biol. Mon. (32 pts.)	1,200	pending	No
Oct. '94	Operator	Inadeq. Wildl. Mon. (29 pts.)	900	pending	No
Nov. '94	Operator	Driving on Reclamation (24 pts.)	480	pending	No
Nov. '94	Operator	Discharge Exceedence (18 pts.)	360	pending	No
Dec. '94	Operator	Spoil Ridges in Pit (20 pts.)	400	pending	No
<u>Issued in 1995:</u>					
January	Operator	Discharge Exceedence (14 points)	\$260	resolved	No
January	Operator	Inconsis. w/Blasting Plan (40 pts.)	2,000	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)	500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)	500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)	500	resolved	No
February	Operator	Inconsis. w/Reveg. Plan (25 pts.)	500	resolved	No
March	Operator	Erosion Problems (41 points)	2,100	resolved	No
March	Operator	Grading Problems (21 points)	420	resolved	No
March	Operator	Pond Constr. Problems (21 pts.)	300	resolved	No
April	Operator	Soil Salvage Problem (19 pts.)	380	resolved	No
August	Operator	Contamin. of Coal Reserve		vacated	
October	Operator	Excess Use of Explosives (22 pts.)	440	pending	No
October	Operator	Failure to Reclaim/Permit Expiration/ Insolv. Bond (pts. undetermined)	undet.	pending	No
November	Operator	Inadeq. Aerial Wildlife Surveys (20 pts.)	400	resolved	No
November	Operator	Discharge Exceedence (13 pts.)	520	pending	No
November	Operator	Inadeq. Aerial Wildlife Surveys (19 pts.)		vacated	

Notes:

1 "Points" refers to the number of points assigned to a violation, based upon the system discussed on the next page.

2 Most of the carry-over violations were Cessation Orders issued to small coal mining operations.

source: Lovelace, 1995, 1996.

10. Considerations in Calculating Penalties. The Coal and Uranium Program uses a point system to assess civil penalties. Points are assigned based on seriousness, negligence, history, and good faith, as described below.

1. **Operator's History of Noncompliance (no maximum number of points):**
One point is assessed for each NON (uncontested violation) or FFCLO (contested violation) in past year; including prospecting and mining, if carried out by same operator.
2. **Seriousness of Violation (max. = 30 points):**
Harm to public health, safety or environment:
 1. Probability of Harm Occurring (max. = 15 points)
 2. Seriousness of Potential or Actual Harm (max. = 15 points)**OR**
Administrative Impairment (max. = 30 points)
3. **Negligence (max. = 25 points)**
 1. Ordinary Negligence (max. = 12 points), or
 2. Gross Negligence (13 - 25 points)
4. **Good Faith (potential of 10-point maximum credit)**

The bureau's manual provides specific guidance and examples, by category, in calculating points. Penalty amounts corresponding to total points are set in rule, with a daily maximum of \$5,000 per day. A "day" is a day the action occurred that resulted in the violation (i.e. failure to submit a report is a one-time occurrence, thus is considered one day of violation, even if it takes two weeks to correct). Penalties for subsequent days that the violating activity occurs are assessed at the same rate.

11. Resolution of Noncompliances. As discussed above in discovery of violations, violations may require on-the-ground work, such as filling in rills and gullies, building a sediment control structure, or mending a structure which failed to work. Others may require a permitting action, typically a minor revision, to implement a new way of doing something: a new practice or using a new piece of equipment. Violations which involve monitoring practices may need to be resolved by minor revision to change a monitoring plan, or may be such that data was not collected and cannot be replaced. Some violations specifically address reclamation practices such as regrading of the surface, soil replacement or seeding. Resolution would involve abatement practices which provide the best scenario for reclamation to succeed. Violations which involve a water effluent problem would address water treatment and sediment control structures being in place and functioning.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Coal and Uranium Program.

- Assuring that offsite damages do not occur
- Assuring that contemporaneous reclamation occurs
- Assuring the health and safety of citizens as associated with concerns with blasting practices and structural integrity of sediment control features (dams and embankments)
- Assuring that coal conservation practices are implemented (all marketable and minable coal is recovered in the mining operation)
- Assuring that long-term hydrologic impacts are minimized

13. Compliance Relationships with Other Agencies.

Oversight. Under SMCRA (federal), if a state develops a coal regulatory program as stringent as the federal requirements, that state can be delegated authority to administer SMCRA (primacy). In 1980, Montana's program was given federal approval to enforce both state and federal coal law in Montana. This brings with it federal Office of Surface Mining (OSM) oversight and the need for state-federal coordination. OSM oversight includes an annual programmatic review of Montana's administration and enforcement of the approved state program. OSM prepares an annual report to Congress of its findings. Annual OSM findings have given Montana's coal program high marks.

In addition to this general OSM oversight, OSM inspectors occasionally accompany state inspectors to ensure accurate assessments are made of industry compliance. Inspections of coal mines involving tribal lands are conducted by both state and federal inspectors (only one Montana mine fits this scenario). Federal inspectors may issue operators a federal notice of violation after giving the state an opportunity to act. With the exception of the Absaloka Mine which has dual jurisdiction due to the tribal coal ownership, no operators in Montana have had federal violations issued to them.

Partnerships. Coal law allows for direct enforcement in any area, including air and water. Citations regarding air or water are issued for violations of the coal program, not the air or water laws specifically. The program maintains an air quality liaison with the Air Quality Division, which works well.

Montana's Governor has requested of the Secretary of the Interior an amendment of the Cooperative Agreement which addresses jurisdiction on federal lands. Negotiations are underway, and are expected to change the interactions of the coal program and the BLM for seeking mine plan approval, and the interactions with OSM for federal permitting and NEPA compliance. Additionally, the Crow Tribe has challenged the MOU between the OSM and Montana for regulation in the Ceded Area. This challenge is being evaluated for options and impacts.

Through membership in the Western Interstate Energy Board, the coal program coordinates with other western state coal mining regulators to keep abreast of federal legislation, litigation regarding federal coal rules, federal procedures, grants, training, and reclamation practices.

Delegated Authority. Aside from primacy authority, there are no specific delegations of authority to the coal program. Rather, the program provisions address other authorities such as the air and water regulation, dam safety, waste management, cultural resources and facilities.

Hard Rock Program

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial. The Hard Rock Mining Program is responsible for administering the Metal Mine Reclamation Act (MMRA) and the Montana Environmental Policy Act (MEPA), coordinating with other DEQ personnel to assure compliance with the Air and Water Quality Acts, and coordinating with other state and federal agencies under other applicable statutes. Hard rock mining laws apply to materials other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, and uranium.

1. Constitutional and Statutory Goals. The following provides a general guide to the constitutional, statutory, federal, and rule authorities for the activities of the Hard Rock Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. IX, Sec. 2** notes that all lands disturbed by the taking of natural resources shall be reclaimed, and the Legislature shall provide effective requirements and standards for the reclamation of lands disturbed.
- **The Metal Mine Reclamation Act** (MCA 82-4-301, et. seq.) authorizes the department to evaluate new mine sites and reclamation plans and to require that adequate information is available to properly formulate reclamation plans.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)
- **Montana Dam Safety Act** (MCA 85-15-105, et. seq.)

- **Hard Rock Impact Act** (MCA 82-4-335, et. seq.)

Related federal authorities:

- **National Environmental Policy Act (NEPA)**
- **Organic Act and National Forest Management Act** (USFS-administered lands)
- **Federal Land Planning and Management Act** (BLM-administered lands)

Hard rock administrative rules:

- ARM 26.4.101 thru .194

Specific enforcement authority:

- MCA 82-4-337, -341, -354 thru -357, and -360 thru -362
- ARM 26.4.107K-107Q

Primacy and jurisdictional agreements:

- MOU with BLM and USFS, covering interagency cooperation on hard rock mining projects
- Project-specific interagency MOUs

2. Program Goals. Based upon the above-referenced guidance, the Hard Rock Program has identified the following program goals:

1. Administer and enforce, to the extent provided by law, the Montana Metal Mine Reclamation Act, the Montana Environmental Policy Act and their respective administrative rules, to allow mineral development while protecting the environment.
2. Provide that the usefulness, productivity and scenic values of all land and surface waters involved in mining or exploration receive the greatest reasonable degree of protection and reclamation to beneficial use.
3. Recognize the recreational and aesthetic values of Montana as a benefit to the state.
4. Provide for mineral exploration, mining and beneficial use of lands while adequately providing for reclamation.
5. Allow for variation in reclamation specifications to account for site-specific variability.
6. Prevent undesirable land, surface water and groundwater conditions which are detrimental to general health, welfare, safety, ecology, and property rights.
7. Maintain and improve Montana's clean and healthful environment for present and future generations.

8. Recognize that complete restoration to an original condition may be precluded by some types of activities, however, minimization of impacts to the extent practical and reasonable is required.
9. Establish, on a continuing basis, vegetative cover, soil stability, water condition, and safety conditions appropriate for any proposed subsequent use of a mined area.
10. Administer and enforce a reclamation program which complies with the Metal Mine Reclamation Act.
11. Strive to make permitting decisions in a sound and timely manner.
12. Promote effective, efficient and economic program management.
13. Administer the law in a fair and unbiased manner.

3. Program Activities. The four major Hard Rock Program activities include: 1) management of small miners, 2) licensing of exploration activities, 3) permitting and management of large mining operations, and 4) production of Environmental Impact Statements and Environmental Assessments. These activities are described in more detail in the following table.

<u>Program Activities</u>	<u>FY 96 Budget¹</u>	<u>FY 96 FTEs²</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr³</u>
Small Miners	136,400	2.5	5.2	750	<5	41
Exploration	106,100	2.0	6.3	372	NA⁴	15
Large Mine Permitting	338,900	7.0	4.7	84	443⁵	4
Env. Review	1,329,400⁶	3.5	3.5	5	870⁷	1

Notes:

- 1 Pro-rated (by FTE) from legislative allocations presented above.
- 2 Does not include 1.43 FTE administrative; 0.5 FTE attorney; and 1.0 FTE Bureau Chief.
- 3 Refers to approximately the last four years.
- 4 Compiled data is not available. Also, the range and type of site varies so greatly that "acreage" is far from meaningful. For example, an exploration site can include 10-500 drill sites, trenches and underground excavations (short to three miles long), and highly variable amounts of temporary road construction, depending on the level of existing roads.
- 5 Sizes of mining operations vary greatly; see preceding discussion, under "regulated community."
- 6 Represents half of the biennial authorization for environmental review activities; this is spending authority only, not allocated dollars.
- 7 Proposed disturbances range from 39 to 2,781 acres and vary with the size and type of deposit as well as method of recovery (surface vs. underground, etc.) The "Environmental Review" row applies to preparation of Environmental Impact Statements (EISs), not Environmental Assessments (EAs), hence the larger figure for "Average Acres per Site."

source: Olsen, 1995, 1996.

Fees and Charges. Hard Rock Program revenues from fees and charges are described below. The amounts of the nonvariable fees are set in statute.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:			
Small Miner (SMES)	\$0	\$ 0	NA
Exploration	\$5	75	emergencies, bond shortfalls, education¹
Large Mine Operation²	\$25	100	"
Annual Renewal Fees³	\$5	900	"
Annual Report Fees³	\$25	2,100	"
Noncompliance Penalties:	varied (≤ \$1,000)	26,000	"
MEPA Fees:	varied	1.3 - 1.5 million	contractor EIS/EA prep.
Excess Workload Fees	varied	< 30,000	EAs, special studies

Notes:

- 1 MCA 82-4-311 provides that these funds may be expended for research, reclamation, and revegetation of land and the rehabilitation of water affected by mining operations. Typically, they are used as noted in the table.
- 2 Includes fees for major amendments to operating permits.
- 3 Annual Renewal Fees apply to exploration licensees only; Annual Report Fees apply to Operations Permits only.

source: Olsen, 1995, 1996.

4. Regulated Communities. Consistent with the activities noted above, the Hard Rock Program interacts with three primary regulated communities: small miners, mineral exploration companies, and mineral development companies. These communities are described below.

Small miners are those disturbing less than 5 acres of ground and removing less than 36,500 tons of material annually. Small miners must sign a Small Miner Exclusion Statement (SMES), committing to not exceed the small mine criteria. A valid SMES exempts them from needing an Operating Permit, unless a portion of their operation involves use of cyanide. If so, they must have an operating permit for that portion. There are approximately 750 small miners, covering about the same number of small mining operations, distributed in 37 of Montana's 56 counties, primarily in the western third of the State. Most of these miners are seasonal operators. About 285 of the 750 are placer miners, three are dredge operators, and the remainder are underground miners. Of the 750, about 19 use cyanide in their operations. (See MCA 82-4-303(15) and -305 for statutory provisions specific to this community.)

Hard rock **exploration efforts** involve the search and testing of potential marketable ores. About half of all the licensees are large companies, contractors, or the development companies themselves. The remainder are medium to small companies and individuals. Exploration activities are limited to a total recovery of 10,000 tons of ore. If exploration efforts will create a "material disturbance," a state license and plan of operations are required. Mechanized exploration requires posting of a reclamation bond. "Hobby miners" (i.e. those collecting rock samples as a hobby, or when products are sold for less than a total of \$100/year) are exempt from exploration or SMES requirements. In 1995, there were 180 exploration permittees, covering 372 exploration licensees, primarily in the western half of Montana. Exploratory efforts typically last two years, and less than 1 percent of exploration efforts lead to development. (See MCA 82-4-303(7) for statutory provisions specific to this community.)

Hard rock operating permits are required for **large mine development**, which involves the extraction, processing and reprocessing of mineral ores, and reclamation of related disturbances by those who are not considered "small miners." These operations may be placer, open pit, or underground operations. In 1995, there were approximately 65 companies operating 84 active hard rock mines in Montana. Mine sizes are varied; of the 1994 permitted mines, 61% were 5-100 acres; 20% were 100-500 acres; 6% were 500-1,000 acres; and 13% were over 1,000 acres. Average operating life varies from one year to over 30 years, depending on the discovery or existence of additional reserves. Of the 159 permits ever issued (since 1971), nearly 75 have been completely reclaimed; seven of the 159 are no longer active, but reclamation is not complete. Of the currently permitted mines, about 50% have filed for major expansions since issuance of their original operating permits.

5. Philosophical Approach to Compliance. According to program staff, through the use of an interdisciplinary professional staff knowledgeable about mining and the site-specific conditions of the many permits, the Hard Rock Program pursues twin goals of prevention and enforcement. Permitting standards, bonding, and regular monitoring of key resources are tools used to prevent significant degradation of resources, when issuing operating permits and exploration licenses. On-the-ground protection of resources is the Bureau's primary goal. Secondly, they strive for timely completion of supporting paperwork. Inspections are conducted to ensure on-the-ground compliance, to anticipate potential problems, and to educate and provide technical input to on-going activities.

6. Compliance Tools Available and Used. Hard rock inspection and enforcement procedures are documented in the program's *Inspection and Enforcement Manual*, drafted in November 1995, and not yet finalized. The menu of tools used by the Hard Rock Program to achieve their natural resource/environmental mandates is shown beginning on the following pages.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with hard rock rules and regulations vary with the type of operator. It is their opinion that large corporations do not want to receive noncompliances; the potential for a noncompliance is a greater

deterrent than a penalty. Small operators, however, tend not to care about public opinion of the blemish of a noncompliance; they are much more upset about the penalty, regardless of the amount.

8. History of Compliance. (Note: program staff have informed the EQC that it would take several weeks of research to generate the graphs requested. They also question whether the graphs, if generated, would be very helpful. Instead, the following qualitative information has been provided.)

Trends in compliance with hard rock rules and requirements are directly related to changes in process and the numbers of inspections. Prior to 1985, the State Lands Commissioner had to sign off on all violations. As enforcement was given to a larger number of program staff, the number of enforcement actions taken has increased. This does not mean, however, that the violations are any more serious, nor does it reflect greater recalcitrance on the part of members of the regulated communities.

Approximately 125 violations have been issued since late 1989. Prior to 1989, the bureau's ability to conduct site inspections was severely hampered by the inability to adequately cover the many operations active in the State (gold was selling at \$600/ounce, meaning production and overall hard rock mining activity was high). As activity decreased and inspections became a clear staff priority, numbers of violations increased. Numbers of inspections through time is shown in Figure 3 of the bureau's Legislative Audit Report. In 1995, all required inspections were completed.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
SMALL MINERS: Education/Information/T.A.: Permitting Workshop Mine Waste Seminar Informal (calls/other contacts)	Offered periodically since 1992, in partnership with USFS and BLM; open to agency personnel, small miners, exploration licensees, permittees, and the public. (see above) When time and opportunity are available.	NA NA staff	1 1 NA
Comp. Planning/Withdrawals: (not authorized)			
Permits/Certifications/Bonds: Small Miner Exemption Statement (SMES): Annual SME Renewal: - Compliance Commitment - Cert. of Bus. Relationships Operating Permit/Conditions Bond SMES Denial	Effective upon filing and initial and continued compliance with small mine criteria; areas previously reclaimed by the state are off-limits to small miners. Required annually to maintain SME status; includes commitment to not pollute streams, to install bulkheads and tunnel doors, to provide a location map, and (for placer and dredge operators) to reclaim disturbed areas. Required annually to maintain SME status; certifies that operator is not involved in any other SME operations. Required for any use of cyanide after 1989; issued upon approval of plan of operations for cyanide portion of operation (triggers requirement for annual reports -- see information for Operating Permits in subsequent portion of matrix). Required for post-1989 placer and dredge operations, and for the cyanide portion of cyanide operations; calculated for cyanide operations based on what the actual costs would be for the state to reclaim disturbed land; maximum bond for placer/dredge operations is \$5,000 per operation. (In 1995, there were 80 small miner bonds held by the Bureau.) On failure of a small miner to pay a penalty, to post bond, to reimburse the state for reclamation costs, or other failures to comply. (New authority as of 1993.)	Applicant NA Applicant Applicant Director staff staff	41new ±650 " " None 10 None

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
SMALL MINERS (cont.) Monitoring/Inspections: Informal (news, conversations) Full-site inspections Complaint	Performed continually on an ad hoc, as time is available basis. No frequency established in statute. On receipt of signed statement alleging violations or imminent danger, and bureau decision to conduct a subsequent inspection. Bureau must respond to complainer within 30 days as to action taken.	staff staff staff	NA 204 3
Administrative Notices/Orders: 10-Day Notice Notice of Noncompliance (NON)/Order of Abatement (w/time frame) Small Miner Response to NON Extension of Abatement Order Time frame 30-Day/Int. to Revoke Order to Vacate NON Termination of Abatement Order to Reclaim Release from Civil Liab.	On minor failure to comply; no potential harm to public or environment, nor impairment of administration of hard rock law. Violation of conditions of SME; general failure to comply - not rapidly (<10 days) remediated; typical time frame to abate is 30 days. Alleged violator requested to respond to NON within 15 days of its receipt. Response should include days of violation and description of mitigating factors that should be considered, or denial of violation. Upon documentation of good faith effort to abate and reasonable need. For failure to comply with Orders to Abate or Reclaim; includes Notice to Foreclose Bond, where applicable. Upon documentation that NON was improperly issued. Upon documentation that NON was abated. For cyanide permits after 1989, or any small mine operation that exceeds the five-acre limit, for failure to reclaim. Upon receipt of penalty payment and completion of abatement.	staff Bur. Chief NA Bur. Chief Director Bur. Chief staff Director Bur. Chief	None 8 None None 2 None 4 None 1

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
SMALL MINERS (cont.) Admin. Penalties/Sanctions: SME/Permit "Blocking" Notice of Proposed Penalty Opportunity for Hearing: - Informal Hearing - Formal Hearing Penalty Modification Penalty Waiver Suspension Order Revocation/Bond Forfeiture	SME is not effective on filing for any small miner who has outstanding penalties, reclamation costs, or has not complied with an outstanding Compliance Order. Issued within 30 days of issuing NON, unless penalty waived or NON vacated. Request must be received within 30 days of receipt of Notice of Prop. Penalty. Upon request. Upon request. Formal hearing must be held within 20 days of request. Upon department determination that penalty is unjust or improperly allocated. Upon correction of subject of 10-Day Notice; if the penalty includes no assessment for seriousness, and a total of \$500/day or less before good faith reduction; the abatement is complete, the environmental damage is minimal, and continued operation is not proposed. For cyanide permits after 1989, for imminent danger or failure to pay penalties. (Note: reclamation and public and environmental protection activities must continue, unless otherwise specified. Upon failure to reclaim within 6 months of cessation of operations; general failure to comply with Orders to Abate or Reclaim.	Director Bur. Chief Bur. Chief H.O./Dir. Bur. Chief Bur. Chief Director Director	None 7 None None None None None 2
Civil Judicial Action:	When administrative remedies are exhausted. Used to get injunction, to resolve differences, to recover penalties, or to recover reclamation costs if necessary.	Legal	1 New
EXPLORATION: Education/Information/T.A.: Permitting Workshop Mine Waste Seminar Informal (calls/other contacts)	Offered periodically since 1992, in partnership with USFS and BLM; open to agency personnel, small miners, exploration licensees, permittees, and the public. (see above) When time and opportunity are available.	NA NA staff	1 1 NA
Comp. Planning/Withdrawals: (not authorized)			

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
EXPLORATION (cont.) Permits/Certifications/Bonds: Expl. License/Conditions Project Changes to License Bond License Renewal License Denial	Required for mechanized, non-hobby activities; issued upon approval of plan of operations (total licensees in 1995 = 180). May involve request for additional sites; granted, if no change in reclamation requirements. Required for all disturbances (372 projects were bonded under 180 licenses in 1995). Required annually, by statute. Upon failure of applicant to pay a penalty, to post a bond, to reimburse the state for reclamation costs, or other failures to comply.	Div. Adm. staff staff Div. Adm. Director	8 new 15 180 180 None
Monitoring/Inspections: Informal (news, conversations) Pre-Licensing Inspections Review of Licensee Reports: Full-Site Inspections Complaint-Generated Insp.	Performed continually on ad hoc, time-as-available basis. Upon submittal of Plan of Operations. Not required. Licensee inspections are performed prior to issuing a license and prior to releasing a bond. Upon receipt of signed statement alleging violations or imminent danger, and Bureau decision to conduct subsequent inspection. (Bureau must respond to complainer within 30 days as to action taken.)	staff staff staff staff	NA 160 96 ±2

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
EXPLORATION (cont.): Administrative Notices/Orders: 10-Day Notice Notice of Noncompliance (NON)/Order of Abatement (with time frame) Licensee Response to NON Order to Vacate NON Extension of Abatement Order Time Frame Termination of Abatement Order to Reclaim 30-Day NON/Intent to Revoke License and Foreclose Bond Bond Release Release From Civil Liability	Upon minor failure to comply; no potential harm to public or environment, nor impairment of administration of hard rock law. Failure to comply; not rapidly remediated. Alleged violator requested to respond to NON within 15 days of receipt of NON. Response should include the number of days of violation and a description of mitigating factors that should be considered, or denial of the violation. Upon documentation that NON was improperly issued. Upon documentation of good faith effort to abate and reasonable need. Upon documentation that abatement is complete. Upon failure to reclaim and/or permit revocation. For failure to comply or reclaim following order. Upon receipt of penalty payment and completion of abatement.	staff Bur. Chief NA Bur. Chief Bur. Chief staff Director Director Director Bur. Chief	None 2 None None None unk. 1 1 22 None
Admin. Penalties/Sanctions: License "Blocking" Notice of Proposed Penalty Opportunity for Hearing: - Informal Hearing - Formal Hearing Penalty Modification Penalty Waiver Suspension Order/Order of Abatement (w/time frame) License Revocation/Bond Forf.	License cannot be issued if applicant has outstanding penalties, reclamation costs, or has not complied with an outstanding compliance order. Issued within 30 days of issuing NON, unless penalty waived or NON vacated. Request must be received within 30 days of receipt of Notice of Prop. Penalty. Upon request. Upon request. Formal hearing must be held within 20 days of request. Upon determination that penalty is unjust or improperly allocated. (See same entry for SMES, above.) Upon evidence of imminent harm to public health or the environment; failure to pay penalties or reimburse reclamation costs. (Note: reclamation and public and environmental protection activities must continue, unless otherwise specified.) Occurs if licensee has not abated, nor requested hearing within 30 days of receipt of Notice of Intent to Revoke.	Director Bur. Chief Bur. Chief H.O./Dir. Bur. Chief Bur. Chief Dir. Dir.	None 1 None None None 1 None 1

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
EXPLORATION (cont.) Civil Judicial Action:	When administrative remedies are exhausted; used to get injunctions, to resolve differences, to recover penalties, or to recover reclamation costs if necessary.	Legal	None
LARGE MINE OPERATIONS: Education/Information/T.A.: Permitting Workshop Mine Waste Seminar Informal (calls/other contacts) Pre-Application Consultation	Offered periodically since 1992, in partnership with USFS and BLM; open to agency personnel, small miners, exploration licensees, permittees, and the public. (see above) When time and opportunity are available. Prior to company submitting application.	NA NA NA staff	1 1 NA <5
Permits/Certifications/Bonds: Operating Permits: -Special Permit Conditions -Minor Amendments -Major Amendments Permit Denial	Required for mining, milling, and waste reprocessing; granted upon approval of operating plan and related contingencies. If necessary to provide appropriate protection. Written request from operator triggers agency analysis and conditions; request granted if compliant with statute. Written request from operator triggers agency analysis and conditions; request considered "major" if affect is significant; request granted if in compliance with statute. Permit is denied if applicant fails to pay penalties, reimburse the state for reclamation costs, or otherwise fail to comply with air, water, or reclamation standards. Two permits have been denied since initiation of the program in 1971.	Dir. staff staff Dir. Director	4 new 1 41 3 None

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
LARGE MINE OPERATIONS (cont.): Monitoring/Inspections: Informal (news, conversations) Initial Inspection Review of Permittee Reports: -Annual Reports -Quarterly Reports Full-Site Inspections: - Annual - Quarterly Complaint-Generated Insp.	<p>Performed continually on an ad hoc, time-as-available, basis. Upon receipt of application for operating permit (or for major amendment to existing permit); focus is upon potential permitting and/or MEPA issues.</p> <p>Required from Operator on annual basis, to provide project status; receipt triggers staff review. (Typically include reports on water balance, soils, incremental bonding, cultural resource mitigation, water monitoring, geologic monitoring, etc.) As required by statute and permit (include water quality monitoring results, and other data required more frequently than annually); receipt triggers staff review.</p> <p>Required for all permitted operations (total of 84; 72 do not require quarterly inspections; 12 inspected quarterly). Required for all active, permitted operations that (a) use cyanide, (b) have a permit requirement to monitor for potential acid rock drainage, and/or © exceed 1,000 acres in permit area (total = 12).</p> <p>Upon receipt of signed statement alleging violations or imminent danger, and Bureau decision to conduct subsequent inspection. (Bureau must respond to complainer within 30 days as to action taken.)</p>	<p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p>	<p>NA</p> <p>4</p> <p>84</p> <p>46</p> <p>72</p> <p>48</p> <p>1</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
LARGE MINE OPERATIONS (cont.) Administrative Notices/Orders: 10-Day Notice Notice of Noncompl./Order of Abatement (w/time frame) Operator Response to NON Order to Vacate NON Extension of Abatement Order Time Frame Termination of Abatement Order to Reclaim Bond Release 30-day Intent to Revoke Release from Civil Liability	Upon minor failure to comply Failure to comply; not rapidly (<10 days) remediated; typical time frame to abate is 30 days from receipt of NON. Alleged violator requested to respond to NON within 15 days of receipt; response should include number of days of violation and description of mitigating factors that should be considered, or denial of the violation. Upon documentation that NON was improperly issued. Upon documentation of good faith effort to abate and reasonable need. Upon documentation that abatement is complete. For failure to reclaim of document temporary cessation. For failure to comply with Orders to Abate or Reclaim; includes Notice to Foreclose Bond, where applicable. Upon receipt of penalty payment and completion of abatement.	staff Bur. Chief NA Bur. Chief Bur. Chief staff Director Director Director unk.	None 4 2 2 1 unk. unk. 4 None 15

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HARD ROCK MINING

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
LARGE MINE OPERATIONS (cont.): Admin. Penalties/Sanctions: Block New Montana Permits Notice of Proposed Penalty Opportunity for Hearing: - Informal Hearing - Formal Hearing Penalty Modification Penalty Waiver Suspension Order/Order of Abatement (w/time frame) Permit Revocation/Bond Forfeit	Permit blocked if person involved in proposed operation was a principal, or had controlling interest, in an operation involved in a bond forfeiture, and costs to department, penalties, and interest have not been paid. Typically issued within 30 days of issuance of NON. Penalty amount is considered to be a "settlement" offer, due within 30 days of receipt of Notice. Must be requested by Operator within 30 days of receipt of NON. Upon request. Upon request. Formal hearing must be held within 20 days of request. Upon department determination that penalty is unjust or improperly allocated. Upon correction of subject of 10-Day Notice; if the penalty includes no assessment for seriousness, and a total of \$500/day or less before good faith reduction; if the abatement is complete, environmental damage is minimal, and continued operation is not proposed. Evidence of imminent harm to public health or the environment; failure to pay penalties or reimburse reclamation costs; failure to submit annual report. (Note: reclamation and public/environmental protection activities must continue, unless otherwise specified.) For failure to comply with NON or Order to Reclaim.	Director Bur. Chief Bur. Chief H.O/Boar d Bur. Chief Bur. Chief staff Director	None 3 1 None None 2 4 None
Civil Judicial Action:	When administrative remedies are exhausted; used to get injunctions, to resolve differences, to recover penalties, or to recover reclamation costs if necessary.	Legal	1

9. "Violations." As noted in the "tools" matrix, MMRA permittees may be out of compliance, issued a 10-Day Notice, correct the problem, and be eligible for a penalty waiver. The MMRA prohibits violation of terms of the Act, rules, and permit provisions; when an inconsistency exists, a "violation" exists. When criteria are not met, a NON is issued. "Significant" violations are defined as violations which create imminent danger to the health or safety of the public or cause significant environmental harm. Since significance criteria have only existed since October 1995, there is no information regarding trends in significant violations.

During the 1995 calendar year, the Hard Rock Bureau issued 14 NONs: eight were issued to small miners, two were issued to exploration licensees, and four were issued to operation permittees. There was one repeat violator in that time period, a small miner, who was issued three NONs in a four-month period, two of which were considered potentially significant. The CY 95 list of hard rock noncompliances is shown below. During 1995, an additional 12 NONs from prior years were released from civil liability because penalties were paid and/or abatement was completed at the end of 1994 or the beginning of 1995.

<u>1995 Hard Rock NONs, by Type and Status</u>					
<u>Month NON Issued</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u>
January	Operating Permit	Reclamation Needed	waived	vacated	No
January	Exploration	Reclamation Needed	unk.	bond forf.	No
March	Exploration	Reclamation Needed	waived	subdivided	No
May	SMES	Sediment Discharge	\$500	settled	No
May	Operating Permit	Road Construction Plan Needed	waived	fully resolved ¹	No
June	CN-SMES	Overtopped Cyanide Ponds +	\$8,000	abated/unpaid ²	Yes ³
June	SMES	Excess Disturbance	1,000	fully resolved	No
June	SMES	Failure to Replace Bond +	1,000	unab./unpd.+	No
September	Operating Permit	Failure to Reclaim	100	fully resolved	No
September	SMES	Reclamation Needed +	1,000	unabat./unpd. ²	No
October	Operating Permit	Failure to reclaim	unk.	fully resolved	No
October	SMES	Exploration w/o License	600	Pending ⁴	No
October	Exploration	Sediment Discharge	15,900 ⁵	Hearing Pend.	Yes ³
October	CN-SMES	Cyanide Release +	10,000	abated/unpd. ²	Yes ³

Notes:

- 1 "Fully resolved" refers to an NON being completely processed; the abatement is complete, the penalty (if not waived) is paid, and the violator has been released from further civil liability.
- 2 Referred to legal staff.
- 3 As of 10/95. MMRA defines significant as creation of an imminent danger to the health or safety of the public or causes significant environmental harm. This violation created some biological impairment, but no fish kills.
- 4 Abatement is still being sorted out, as ownership is being sorted out.
- 5 According to program staff, this operator is in transition in terms of ownership, as well as goals (having applied for an operating permit without the necessary level of expertise available onsite). The miner is working with the Department to come into compliance, but is not finding it easy. The miner has requested a hearing on the penalty. The hearing will be delayed until abatement is complete.

source: Olsen, 1995, 1996.

Discovery of Violations. Most violations in the Hard Rock Program are discovered through inspections, as shown on the following page.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Small Miners	7	0	0 ¹	7	0
Exploration	3	0	0	2	0
Large Mine Operations	4	0	0	4	0

Notes:

- 1 This NON was issued as a two-part penalty. The operator self-reported additional releases of sediment-laden water, which added to the total days the violator was assessed a penalty.

source: Olsen, 1995, 1996.

10. Considerations in Calculating Penalties. The Hard Rock Program uses a violation determination system similar to the Coal Program, with different economic ceilings for penalties. Under most circumstances, the total proposed penalty can not be less than \$100 per day, nor exceed \$1,000 per day. If the violation creates imminent public harm or significant environmental effect, the maximum daily penalty is \$5,000. Penalty amounts are calculated as follows:

Violator's History of Noncompliance:

\$50/each NON in last 3 years

\$250/Suspension Order in last 3 years

(Note: Only NONs/SOs that have been resolved are counted; "resolved" means that the penalty has been paid, abatement completed, and civil liability released.)

Seriousness of Violation, based on:

(1) harm to public health, public safety or environment (\$5,000/day maximum); and/or

(2) violation of an administrative requirement (e.g. submitting a report) that impairs administration (maximum fine = \$1,000/day); and/or

Negligence:

(1) Accidental = \$0

(2) Ordinary Negligence = \$200

(3) Intentional Negligence (acting with disregard, but no intent to violate) = \$400

(4) Aggravated Negligence (intent to violate) = \$500

Good Faith: Deductions of up to \$200/day can be made for extraordinary measures taken to achieve compliance in set time frames. \$50 can be deducted if the violation is self-reported.

Number of Days: The per-day penalty (calculated via the above considerations) is multiplied by the number of days the violation was occurring. For a one-time incident (e.g. disturbance across the permit boundary), one day would be assessed, whereas multiple days are assessed for ongoing occurrences (e.g. continuing to discharge waters not in compliance with standards).

Additional information on penalty calculations for the Hard Rock Program is provided in ARM 26.4.107O.

11. Resolution of Noncompliances. (Note: program staff have informed the EQC that information on the resolution of compliances over time is in the files, but would take a considerable amount of time to compile into the suggested bar graphs. They note that an electronic tracking system was not initiated until a few years ago. They also note that numbers are most likely affected by the total number of operations permitted, and that differences shown (based upon anything but statutory changes) were not significant. Instead, the following qualitative information has been provided.)

Most noncompliances in the Hard Rock Program are resolved through administrative processes. No trends exist based upon time alone. Since late 1989, seven NONs have been referred to legal staff for additional action. (This number does not include a situation in 1993, where numerous violations, tied to one operator, were referred to legal staff because collection was complicated by the operator filing for bankruptcy.) In 1995, three violations were referred to legal staff. As a result of legislative changes in 1995, any judicially-resolved noncompliances will be more cost-effective for the department. (Prior to 1995, all penalties were settlement offers; thus the full range of the noncompliance was open to judicial review.)

12. Current Compliance Priorities. Agency staff have identified the following short-term, co-equal, inspection and enforcement priorities for the Hard Rock Program:

- promoting regulatee understanding of permit/license/SMES requirements
- completing required inspections
- processing required enforcement actions
- providing technical and program information to operators/licensees/small miners to facilitate compliance with the MMRA.

13. Compliance Relationships with Other Agencies.

Oversight. There is no federal oversight of the implementation of hard rock mining laws in Montana. There is federal oversight, however, of Montana's air and water programs, with which the mining program coordinates.

Partnerships. As noted in the tools matrix, the Hard Rock Bureau partners with the U.S. Forest Service and U.S. Bureau of Land Management in holding training sessions. These have been well-attended. Also, Memoranda of Understanding (MOUs) provide for the sharing of permit reviews, permit maintenance, and inspections reports. These relationships are working well.

The Metal Mine Reclamation Act allows for direct enforcement in water and air when specific water and air permit provisions in a plan of operations have been violated. The Hard Rock Bureau has some "delegated" authority from the Water Quality Division, in that the Water Quality Act provides exemptions from duplicative permitting of some activities under that Act. In addition, violations are issued by DEQ's Water Quality Division when performance standards of the Water Quality Act have been violated. The issue of double jeopardy has been raised.

Prior to issuing an operating permit, the Hard Rock Bureau must get certification from the Department of Commerce that an applicant is in compliance with the Hard Rock Impact Act.

The Bureau routinely provides copies of operating permit inspection reports to other DEQ programs and appropriate state/federal land managing agencies.

Delegated Authority. There are no MMRA authorities that have been delegated to entities other than the Hard Rock Bureau.

WASTE MANAGEMENT DIVISION

The Waste Management Division is one of 6 currently organized within the Department of Environmental Quality. The division represents an organizational grouping of four separate but closely related environmental protection programs. Each of the four programs is designed to protect public health and the environment. They include: 1) Solid Waste Management, which provides for the licensing, technical assistance, inspection and enforcement of municipal, County, and private solid waste management systems throughout the state; 2) Motor Vehicle Recycling and Disposal, a regulatory program that controls the removal and disposal of junk motor vehicles and shielding of vehicle disposal sites; 3) Hazardous Waste, a regulatory program that controls the generation, transportation, treatment, storage, and disposal of hazardous wastes; and 4) the Underground Storage Tank (UST) Release Prevention program, a regulatory program designed to prevent releases from underground tanks. Refer also to the Environmental Remediation Division for further information regarding corrective action efforts.

The programs operate under the authorities and directives of one or more state laws. With the exception of the Motor Vehicle Recycling and Disposal Program, each of the programs is Montana's counterpart response to a federal environmental program established under the authority of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). The Motor Vehicle Recycling Program is purely a state initiative, established by the 1973 Legislature, and has no direct national counterpart.

Each of the programs functions to control the handling and ultimate disposal of waste materials, except the Underground Storage Tank Release Prevention Program, which functions to minimize the occurrence of releases from tank systems that store petroleum products or hazardous substances.

All four of the Division's programs have been identified as being subject to review under the criteria established by the EQC Subcommittee for the Compliance and Enforcement Study. The FY 96 budget, staffing and funding source information for the Waste Management Division is provided below.

Funding Source, FY 96

<u>Program/Activity</u>	<u>General Fund</u>	<u>State Special</u>	<u>Fees</u>	<u>Federal</u>	<u>Total Funds</u>	<u>FTE auth.</u>
Motor Vehicle Recyc	0	1,073,688	0	0	1,073,688	3.71
Solid Waste	151,997	0	626,851	0	778,848	15.07
UST Release Prevntn	0	47,158	604,241	141,474	792,873	11.86
Hazardous Waste	0	520,602	12,792	390,692	924,086	16.20
TOTAL (FY 96)	151,997	1,641,448	1,243,884	532,166	3,569,495	46.84
TOTAL (FY 90)¹	195,354	1,483,839²		557,428	2,236,621	23.50

Notes:

¹ The Waste Management Division did not exist in FY 90; information extracted from 1989 LFA report; Dept. of Health and Environmental Sciences, Solid and Hazardous Waste Bureau figures excluding Superfund, LUST, and CECRA figures (see also Environmental Remediation Division).

² 1990 figure includes fees

sources: Thorvilson and DEQ Central Services Div. 1996, LFA 1989 for FY 90.

Legislative History:

Events important to the compliance/enforcement elements of the Waste Management Division are summarized below.

1965	Solid Waste Management Program initiated
1973	Motor Vehicle Recycling and Disposal Act
1976	Congress passes the Federal Resource Conservation and Recovery Act (RCRA) establishing federal requirements for managing solid and hazardous wastes in the U.S.
1977	Hazardous Waste Program authority added to Mont. Solid Waste Mgmt Act
1981	Montana Hazardous Waste Management Program receives federal "Interim Authorization"
1981	Montana Hazardous Waste Management Act recodified
1984	Montana Hazardous Waste Management Program receives federal Authorization
1984	Congress passes Federal RCRA Subtitle I; initiates federal\state Underground Storage Tank programs
1985	Mont. Haz Waste Act amended to authorize initial state UST program efforts
1989	Mont. Haz Waste and Underground Storage Tank Act
1989	Mont. Petroleum Tank Release and Compensation Act
1989	Mont. Underground Storage Tank Installer, Licensing and Permitting Act
1991	Montana Infectious Waste Management Act
1991	Montana Megalandfill Siting Act
1991	Montana Integrated Waste Management Act
1993	Federal RCRA Subtitle D Solid Waste Rules effective
1993	Montana Solid Waste Management Program receives federal Approval
1996	Montana Underground Storage Tank Program receives federal Authorization

Solid Waste Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Solid Waste Program.

Primary constitutional and statutory authorities (see Appendix B):

- Article II, section 3 - "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment"
- **75-10-202. Legislative findings and policy.** The health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources.
- **75-10-902. Purpose - Megalandfills.** It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives.
- **75-10-1002. Purpose - Infectious Waste.** The purpose of this part is to protect the public health, safety, and welfare of the citizens of Montana by developing and implementing infectious waste management policies that are reasonable, cost-effective, aesthetically pleasing, and environmentally acceptable.
- **75-10-101. Purpose - Solid Waste.** Encourages good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan.

- **75-10-804. Integrated waste management priorities.** State purpose to plan for and implement an integrated approach to solid waste management on the following order of priority:
 - (1) reduction of waste generated at the source;
 - (2) reuse of waste;
 - (3) recycling of waste;
 - (4) composting of biodegradable waste; and (5) landfill disposal or incineration.

Supplemental and/or related state authorities:

- 75-1-201, Montana Environmental Policy Act
- 75-2-210, Clean Air Act
- 75-5-301, Water Quality Act
- 75-10-401, Hazardous Waste and Underground Storage Tank Act
- 75-10-701, State CECRA Act

Related federal authorities:

- 42 U.S.C. § 6901 et seq. Resource Conservation and Recovery Act

Specific enforcement authority:

- 75-10-224, License revocation
- 75-10-227, Administrative enforcement,
- 75-10-228, Civil penalties
- 75-10-231, Criminal penalties
- 75-10-939, License revocation
- 75-10-943, Civil injunctions and penalties
- ARM 17.50.526, Enforcement

Primacy and jurisdictional agreements:

- EPA approval to enforce RCRA Subtitle D regulations.

2. Program Goals. Based upon the above-referenced guidance, the Solid Waste Program has identified the following program goals:

1. Ensure that all proposed solid waste management systems are designed and constructed in compliance with all applicable state laws and rules. Review solid waste management system license applications for compliance and issue/deny licenses as appropriate to approximately 20 new solid waste management systems per year.
2. Ensure that all solid waste management systems are operated and maintained in compliance with all state

laws and rules.

Conduct detailed compliance inspections and monitoring reviews at all licensed solid waste management systems.

3. Ensure that program funding mechanisms are maintained and complied with to provide the program with sufficient funds for operation. Assess and collect annual solid waste management system license fees and license application fees from all systems or systems applying for a license.
4. Ensure that solid waste management systems are planned, designed, and constructed in a manner compatible with the Montana Integrated Solid Waste

Management Plan. Provide technical assistance and advice to owners and operators on licensing, operational, and waste reduction/reuse/recycling issues.

5. Ensure that all solid waste disposal activities protect the human and physical environment as required by state laws and rules.

Investigate complaints and/or reports of illegal or noncomplying disposal activities and pursue legal enforcement where necessary.

6. Ensure that system owners, operators and the public have access to reliable information on solid waste disposal issues.
Serve as a clearinghouse for information on waste reduction/reuse, recycling technology, composting and household hazardous wastes.

3. Program Activities. The Solid Waste Program's activity revolves around the regulation of solid waste management facilities. These activities include conducting on-site inspections at solid waste management facilities; reviewing construction and operational plans for new or upgraded facilities; preparation of Environmental Assessments for new facility licensing; conducting on-site investigation of complaints; reviewing facility files and environmental monitoring data; consulting with facility owners and operators on matters of compliance; compiling evidence and documents for enforcement cases; preparing and conducting operator training opportunities; consulting with cities, counties, owners, operators, and other interested groups on the issue of integrated waste management activities; and responding to inquiries and requests for information from the regulated community and the general public.

There are 119 licensed sites in Montana including:

Burn sites:	9	Municipal Solid Waste Incinerators:	1
Compost sites:	2	Class III Resource Recovery Facilities:	3
Infectious waste treatment facilities:	1	Septage Disposal Facilities:	1
Class II landfills:		Soil Treatment Facilities:	4
(municipal solid waste landfills)	42	Class II Transfer Stations:	9
Class III Landfills:			
(inert materials)	47		

These activities are described in more detail below.

Program Activities	FY 96 Budget	FY 96 FTEs¹	Avg. Years Staff Retntn.	1995 Ongoing Projects/Sites	Avg. Tons/ Site	Avg. # of new proj./yr
Licensing/upgrades	\$172,351	3.5	2.07 yrs	NA	26,676	17/28²
Regulatory Inspection and Complaint Enforcement	\$277,240	5.63	2.14 yrs	27³	NA	132/72/1⁴
Recycling	\$49,243	1.0	2.25 yrs			
Program Support	\$156,102	3.17	2.6 yrs			
Administration	\$87,161	1.77	2.0 yrs			
Operator Training	\$46,750	N/A	N/A			
Total	\$788,847	15.07				

Notes:

1. Above figures include 1.77 FTE administrative; .96 FTE attorney; and 3.17 FTE Program Support.
2. Licenses/Closures
3. Unresolved complaints
4. Inspections/Complaints/Formal Enforcement

source: Dilliard, 1996.

Fees and Charges

The Solid Waste Program receives 80.5% of its operating budget from the state special revenue fund. This fund consists of license renewal fees, license application review fees, and megalandfill certificate of site acceptability and penalty fees.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses¹</u>
License Application Fees:			
Major Class II Landfill	\$10,000	\$10,000	
Intermediate Class II Landfill	7,500	3,750	
Minor Class II Landfill	5,000	0	
Major Class III Landfill	3,000	0	
Minor Class III Landfill	2,000	6,000	
Major Incinerator	10,000	8,000	
Intermediate Incinerator	7,500	0	
Minor Incinerator	5,000	0	
Major Soil Treatment Facility	1,000	0	
Intermediate Soil Treatment Facility	3,000	6,000	
Minor Soil Treatment Facility	2,000	2,000	
Transfer Station (>10,000 tons/yr)	3,000	0	
Transfer Station (<10,000 tons/yr)	1,000	0	
Larger Composter Operation	5,000	0	
Megalandfill Fees	40,000 ²	0	

Notes:

1. All fees, fines, and penalties collected under the Solid Waste Management Act and the Megalandfill Siting Act, except for those collected by a justice's court under the Megalandfill Act, must be deposited in the solid waste management account provided in 75-10-117, MCA for use by the department in carrying out its functions and responsibilities related to solid waste management.
2. Plus an additional fee of \$.20 per ton above 200,000 tons.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses¹</u>
Annual License Fees:			
Major Class II Landfill	\$3,500 ²	\$214,584	
Intermediate Class II Landfill	3,000 ²	105,318	
Minor Class II Landfill	2,500 ²	54,121	
Major Class III Landfill	1,000	3,000	
Minor Class III Landfill	500	25,265	
Major Incinerator	3,500 ²	0	
Intermediate Incinerator	3,500 ²	7,179	
Minor Incinerator	2,500 ²	0	
Major Soil Treatment Facility	1,500	2,250	
Intermediate Soil Treatment Facility	1,000	0	
Minor Soil Treatment Facility	500	500	
Transfer Station (>10,000 tons/yr)	1,050	2,100	
Transfer Station (<10,000 tons/yr)	400	2,207	
Larger Composter Operation	1,500	3,000	
Infectious Medical Waste Processor	2,500	2,503	
Imported Solid Waste Fees	0 ³	11,071	

Notes:

1. All fees, fines, and penalties collected under the Solid Waste Management Act and the Megalandfill Siting Act, except for those collected by a justice's court under the Megalandfill Act, must be deposited in the solid waste management account provided in 75-10-117, MCA for use by the department in carrying out its functions and responsibilities related to solid waste management.
2. Plus an additional disposal fee of \$.31 per ton.
3. Plus an additional disposal fee of \$.27 per ton.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses¹</u>
License Transfer Fees²:			
Major Class II Landfill	\$500	0	
Intermediate Class II Landfill	400	0	
Minor Class II Landfill	300	0	
Major Class III Landfill	200	0	
Minor Class III Landfill	150	0	
Major Incinerator	500	0	
Intermediate Incinerator	400	0	
Minor Incinerator	300	0	
Transfer Station (>10,000 tons/yr)	100	0	
Transfer Station (<10,000 tons/yr)	250	0	
Larger Composter Operation	400	0	

Notes:

1. All fees, fines, and penalties collected under the Solid Waste Management Act and the Megalandfill Siting Act, except for those collected by a justice's court under the Megalandfill Act, must be deposited in the solid waste management account provided in 75-10-117, MCA for use by the department in carrying out its functions and responsibilities related to solid waste management.
2. License transfer fees apply only to those facilities where there is a change in ownership. This does not frequently occur, averaging less than 1 transfer per year.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses¹</u>
Noncompliance Penalties:			
Administrative Penalty	Not Authorized		
Civil Penalty	\$1,000/day	\$7,500	
Civil Penalty - Megalandfill	25,000/day	0	
Criminal Penalty	50-500/day	0	
Dumping	Up to \$100	0	
Absolute Liability	Up to \$5,000	0	

<u>Type</u>	<u>Typical Annual Amount</u>	<u>Total</u>	<u>Uses</u>
Additional MEPA Fees:	Not authorized		

4. Regulated Communities. In general any person operating a solid waste management system, constructing a megalandfill, or improperly disposing of a solid waste is a member of the regulated community. The program uses the licensing process as well as investigations and inspections to identify the actual regulated community. 66% of the 119 licensed site are local governments and 34% are private business or individuals.

5. Philosophical Approach to Compliance. The program believes that when a violation is noted, reasonable informal enforcement efforts to obtain voluntary compliance should be used prior to resorting to formal enforcement actions.

The program will pursue all available options to promote compliance. Including:

- licensing reviews to ensure that proposed facilities are designed and planned to comply with the requirements;
- periodic routine inspections to ensure that facilities are constructed, operated, and maintained in compliance;
- investigation of complaints to determine compliance status;
- individual and on-site consultations with operators on specific compliance problems and options for correction;

- continuing owner/operator educational and training opportunities to help them understand the requirements and how to comply with them; and when necessary, formal enforcement actions.

6. Compliance Tools Available and Used. The menu of tools used by the Solid Waste Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with DEQ's rules and regulations are as follows.

Agency-Generated:

- Compliance with the rules and regulations does not provide the agency with an incentive or reason to pursue enforcement actions.
- A history of good compliance would allow the agency to use its enforcement discretion when a violation does occur and delay or downgrade the enforcement action.

Industry-Generated:

- Large multinational waste management companies offer awards and other recognition for facilities with exceptional performance records.

Client-Generated:

- Local Governments, Solid Waste Districts, and major industries and businesses may use compliance in the selection of solid waste management facilities to be used. Lack of compliance may result in the loss of business.
- Federal regulations allow for citizen filed lawsuits against any waste management facility that they believe is not complying with the requirements of federal regulations. A losing facility may be responsible for large monetary judgements and defense costs.
- Public and/or neighbor demand for adequate protection from potential impacts of improper waste management may inspire compliance.

Other:

- Noncompliance can result in legal and financial liability for damage caused by an environmental release from the facility as well as the responsibility for the cleanup costs.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SOLID WASTE			
Tools Authorized	"Trigger" (When Used?) ¹	Authority to Complete	Times Used? (95)
Education/Information/T.A.: * Routine Activities * Formal Education Activities * Written Material	Information and technical assistance are provided to solid waste management facility owners and operators whenever a violation is discovered. This information and assistance is offered in the field at the time of the inspection/discovery and further information is provided in the official inspection report or letter that follows.	Staff	145 Approx
	In addition the program sponsored and participated in formal educational/training seminars for solid waste management facility owners and operators.	Staff	6
	Also the program publishes and distributes a quarterly newsletter for solid waste management official, environmental health officials, and local government officials, and other interested parties that discusses various topics of interest and relays information and advice to the readers.	Staff	4
Comp Planning/Withdrawals: * State Solid Waste Management Plan	Section 75-10-807 requires the DEQ to prepare and implement an integrated waste management program ensuring adequate disposal capacity.	Board of Environmental Review (BER)	Annual Plan Review
Permits/Certifications/Bonds: * Facility License * Certificates of Site Acceptability	A license from the department is required prior to the operation of a solid waste management facility. The licensing process is triggered by the submittal of an application from the proposed facility and is reviewed by the program for compliance with the regulations. A solid waste management facility license issued by the department is not valid until signed by the local health officer. Licenses are permanent but must be renewed annually.	Division Administrator	110
	Certificates of site acceptability are required prior to the construction and operation of a megalandfill. The certification process is triggered by the submittal of a long-range plan 2 years in advance of submitting a license application to the department. The certification and licensing reviews run concurrently.	BER	

Notes:

¹ The actual "trigger" of any particular enforcement tool may vary for each effort depending on the particulars of the situation. For instance; a facility that has a good compliance history and has demonstrated a willingness to cooperate with the department may be started at a lower level of enforcement action than a facility with a bad compliance history and past uncooperativeness.

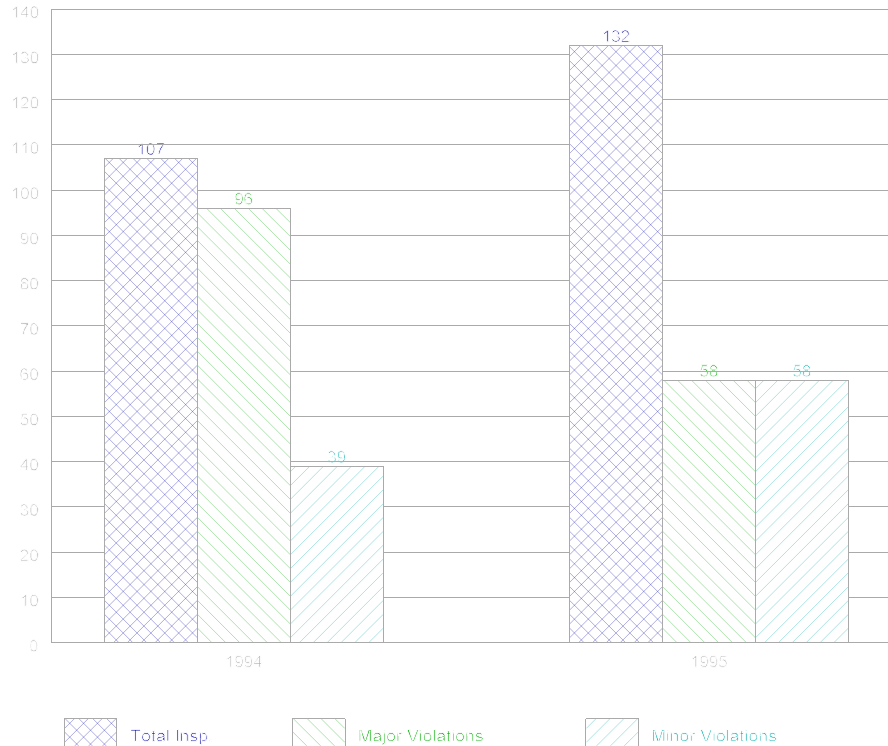
STATE COMPLIANCE/ENFORCEMENT TOOLS -- SOLID WASTE			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certifications/Bonds Cont: * Financial Assurance/Bonds	Financial Assurance/Bonds are required for closure activity, post closure monitoring, and any corrective actions at all Class II landfills and megalandfills. The financial assurance/bond may be forfeited if the facility does not meet the closure, post-closure, or corrective action requirements.	DEQ Director (or BER for Megalandfills)	0
Monitoring/Inspections: * On-site routine inspections * Monitoring * Complaint Investigation	<p>On-site routine inspections are conducted at licensed solid waste management facilities annually. Follow-up inspections are performed as needed to verify compliance activity deadlines and/or continued compliance or noncompliance after an initial inspection.</p> <p>Monitoring of groundwater and methane gas is required at licensed Class II landfills. Groundwater must be tested semiannually and methane gas generation monitored on a quarterly basis. The monitoring is conducted by the facility operator and the results are submitted to the program and reviewed by the program staff.</p> <p>Investigation of complaints is triggered by the receipt of the complaint by the program. All complaints are investigated at the earliest possible convenience and when necessary referred to the appropriate program, division, or agency if not a solid waste violation.</p>	<p>Staff</p> <p>Staff</p> <p>Staff</p>	<p>132</p> <p>80 Ground Water 148 Methane</p> <p>57</p>
Administrative Notices/Orders: * Warning Letters * Administrative Orders	<p>Warning letters are used in situations where the violator is an unlicensed facility or individual and an inspection report is inappropriate. They are also used to confirm the noncompliance and the department commitment to pursue further enforcement in situations where licensed facility operators may be becoming reluctant to proceed with efforts to obtain compliance.</p> <p>Administrative Orders are a formal enforcement activity that can be used for any magnitude of violation (low to emergency). Triggers for an administrative order range from repetitious violations of a low magnitude to an extreme situation posing imminent or immediate hazard requiring a quick enforcement response.</p>	<p>Program Manager</p> <p>DEQ Director</p>	<p>22</p> <p>1</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SOLID WASTE			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: * Penalties Not Authorized * Sanctions	<p>The possible authorization of the Solid Waste Program to collect administrative penalties has been considered in the past. However, considering that the regulated community consists largely of local governments, current thinking is that use of this type of enforcement action would create economic hardships for the facility operator (local government) and cause considerable conflict between state and local governments. Such hardships and conflicts may out weigh the usefulness of this type of enforcement tool.</p> <p>Withdrawal of approval or license revocation or injunction to force cessation of the activity can be used in serious situations at chronically out-of-compliance facilities or if the violation is posing an imminent and substantial risk to public health or the environment. Use of this enforcement tool requires serious consideration be given to the impacts that the loss of disposal services may have on users of the facility, the public health and the environment in relation to the threats posed by the violation.</p>	N/A DEQ Director	N/A 0
Civil Judicial Action:	Civil judicial actions are used as a punitive measure in extreme situations where a facility or party involved has become recalcitrant and all other efforts to gain compliance have failed or a serious threat to public health or the environment exists.	DEQ Director	0
Criminal Judicial Action:	Misdemeanor criminal penalties can be used for facilities or parties that knowingly and willfully violate the laws and rules and have resisted efforts of voluntary compliance.	DEQ Director	0

8. History of Compliance. Pre-1991, the Solid Waste Program had little presence within the regulated community. With only a few employees and more than 240 solid waste management facilities, the program's enforcement presence was minimal and primarily focused on the most severe violations. Since that time the program has been allowed to expand and increase its enforcement presence as well as the educational and training opportunities provided to operators. With these increased efforts the program has seen a continual decline in the number and the severity of the violations noted. The following graphs illustrate that point.

Major and Minor Inspection Violations

At Solid Waste Facilities





With the implementation of the new federal and corresponding state regulations governing the disposal of municipal waste, the state has seen a decrease in the number of licensed Class II landfills. Many facilities faced with the substantially more stringent requirements have chosen to close their operations and transport their wastes to a larger regional facility that can distribute the costs of the new requirements over a larger user base. Generally these larger facilities are more capable of handling the financial burden of compliance. Even though there has been a decrease in the number of licensed facilities, the department has not seen a corresponding decrease in the workload required. The more stringent requirements have created more compliance issues and a greater need for education and training of facility operators. On-site inspections require more time to perform; design and plan reviews are much more technical and time consuming; and an increase in educational efforts has been required.

9. "Violations." Violations at solid waste management facilities can generally be grouped into two broad categories: design and operational. Design violations involve the construction and environmental protection features that must be incorporated in the facility. Operational violations involve the standards by which the facility must operate. Violations can be further divided into major and minor violation categories. Criteria considered for major or minor designation of a violation include the magnitude of the situation causing the violation, the potential for the violation to cause human or environmental impacts, and/or the frequency of the violation. Major violations should be corrected immediately to prevent further enforcement actions.

Minor violations should be corrected as soon as possible to prevent them from becoming major violations. Major violations for which enforcement actions are being considered can be further divided into magnitude of violation (low, moderate, high, severe, and emergency) as described in the program's *Compliance and Enforcement Guidance Manual*.

Of the 135 violations discovered at licensed solid waste facilities in 1994, 96 of those violations were considered to be major and 39 were minor. Of the 116 violations found in 1995, only 58 were major and 58 were minor (See previous graphs). In addition, 48 recorded complaints concerning nonlicensed facilities resulted in another 12 documented violations.

One factor that has played a role in the number and type of violations noted in the last several years is the advent of the revised federal regulations for the disposal of municipal waste and the corresponding changes to the state regulations. Landfill operators that were unprepared to implement the necessary changes have found themselves in violation of the new requirements. However, nearly all of these facilities are now making progress in implementing the changes and will be able to remove these particular areas of noncompliance from the noted violations once completed. This will likely result in a further decrease in the number and severity of violations recorded at solid waste facilities.

Discovery of Violations. Violations are identified through on-site inspections and investigation and through review of environmental monitoring data submitted to the program. Citizen complaints will also be investigated to determine if there is a valid basis for the complaint.

Group	<u>Violations Discovered, by method, 1995</u>				
	<u>Total</u>	<u>Agency Review of</u>	<u>Self-Reporting</u>	<u>Inspection</u>	<u>Citizen</u>
	<u>Complaints/Inspections</u>	<u>Monitoring Reports</u>	<u>of Violation</u>		<u>Complaint</u>
Burn Site	9/12	N/A	0	9	0
Compost Site	2/1	0	2	0	0
Infectious Waste Treatment Facility	0/1	0	0	0	0
Class II Landfill	138/47	19	29	90	5
Class III Landfill	10/48	N/A	0	7	3
Solid Waste Incinerator	0/1	0	0	0	0
Class III Resource Recovery Facility	0/2	N/A	0	0	0
Soil Treatment Facility	0/4	0	0	0	0
Transfer Station	7/8	N/A	0	6	1
Container Site	2/1	N/A	0	2	0
Unlicensed Landfill	2/4	N/A	0	2	0
Other ¹	<u>12/48</u>	<u>N/A</u>	<u>0</u>	<u>0</u>	<u>12</u>
Total	187/177	19	31	116	21

Notes:

1. "Other" includes mainly investigations of citizen complaints regarding illegal disposal of solid waste.

10. Considerations in Calculating Penalties. Currently the program will attempt to collect the full penalty allowed by law when a formal enforcement action is taken. This policy is being modified by the development of a penalty calculation formula. The program will consider the frequency of violations and has formal criteria for judicial enforcement.

11. Resolution of Noncompliances. To date, all formal enforcement actions are closed. There are no on-going formal enforcement actions. A summary of all formal enforcement actions since 1993 is provided below.

Solid Waste Program Formal Enforcement, by Type and Status					
Year Action Taken	Type of Landfill	Desc. of Violation	Penalty Assessed	Status at Year End	Significant Violation?
1992	Private	Violation of consent decree and compliance plan and schedule	None	Closed	No
1993	Municipal	Operation without a license	\$15,000 ¹	Closed	Yes
1993	Municipal	Operation without a license	None	Closed	Yes
1993	Municipal	Operation without a license	None	Closed	Yes
1994	Private	Operation without a license	None	Closed	Yes
1995	Private	Failure to compact and cover waste	None	Closed	No

Notes:

1. This penalty resolved all three municipal violations from 1993.

Of the 187 violations identified in 1995, approximately 150 have been completely resolved through informal means. Most of these have been resolved using notices of violation, inspection reports, and technical assistance.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Solid Waste Program.

- Redefine waste groups in rules to provide for additional waste groups and classes of landfills. Certain types of non-municipal wastes currently considered Group II waste, such as portions of the construction and demolition debris waste stream, do not need the same environmental protection controls that current Class II landfills provide. As a result, these types of wastes are costly to dispose of in Class II landfills. Developing additional groups and appropriate classes of landfills for them will reduce disposal costs and eliminate much of the illegal disposal occurring.
- Work with the program attorney and staff of the DEQ Enforcement Division to develop a penalty calculation guidance document which will take into consideration frequency of the violation, economic gains from noncompliance, magnitude of the violation, defendant's ability to pay, and other factors.
- Develop additional guidance documents and educational materials for operator use in compliance with the regulations.
- Work with the Montana Association of Counties and Montana State University Extension Service to develop additional formal training seminars for solid waste management facility operators.
- Develop a new and expanded electronic data base programs for the tracking of facility compliance monitoring data such as ground water testing results, methane monitoring data, inspection results, complaint investigation tracking, and a facility chronological history tracking system, that are comprehensive and user-friendly.
- Work with the Department of Public Health and Human Services to develop a well-defined coordination of regulatory activity and rules that may be necessary for full implementation of the Infectious Waste Management Act.
- Reevaluate and make changes to the program's Site Disposition Policy and working arrangements with other programs and agencies in consideration of recent governmental and

departmental reorganizations to assure that site regulation, monitoring, and review are being handled by the appropriate entity.

13. Compliance Relationships with Other Agencies.

Oversight. Montana's solid waste management regulations have been modified and adopted as counterparts to the Federal Resource Conservation and Recovery Act Subtitle D regulations. With those changes the solid waste management program has received approval from the Environmental Protection Agency. This approval means that the DEQ has primacy for the regulation of solid waste disposal in the State of Montana. The nature of the program approval is such that the EPA has determined that Montana's regulations and program structure assure that the minimal federal requirement will be met in Montana. With this determination and approval, the EPA does not have any direct oversight with the state program. However, should the state's regulations or program change, the EPA can make a determination that the program is no longer adequate and remove approval, if necessary.

The DEQ does not receive any funding from the EPA for the operation of the solid waste program so there is no EPA oversight, review, or reporting required of the program.

Partnerships. The program has an intra-department Site Disposition Policy for the division of roles and responsibilities among the Department's CECRA, LUST, Hazardous waste, Water quality, and air quality programs. The Department of Agriculture and Abandoned Mines program are included in this policy as well.

Additionally, the statutes exempt certain activities from regulation under this program. The Solid Waste program will defer responsibilities for these activities to the appropriate administrative agencies. This issue will be reevaluated due to the recent state agency reorganization.

Delegated Authority. The solid waste management program does not have any delegated authorities, although the program does work with local health departments when necessary to make initial investigations of complaints.

Motor Vehicle Recycling and Disposal Program

Montana's constitution provides for certain inalienable citizen's rights which includes the right to a clean and healthful environment. The state legislature has unilaterally, without federal mandates or pressure, declared that junked motor vehicles as defined in state law interfere with the public's right to a clean and healthful environment. While there can be ancillary public health and safety issues involved, this program is primarily intended to provide for a clean environment through aesthetic improvement by requiring motor vehicle wrecking facilities to be regulated and junked motor vehicles to be screened from public view or removed and recycled.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Motor Vehicle Recycling and Disposal (MVR&D) Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II, Section 3 and Article IX Section 1 which states;**
"1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
2) The legislature shall provide for the administration and enforcement of this duty.
3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."
- **Montana Motor Vehicle Recycling and Disposal Act (MAR.&D Act)** (MCA 75-10-501, et. seq.) provides for licensing of wrecking yards, and the regulation, collection and recycling of junked motor vehicles.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)

- **Junkyards Act** (MCA 75-15-201 et. seq.)
- **Montana Solid Waste Management Act** (MCA 75-10-201, et. seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)

Related federal authorities:

- **none**

Motor Vehicle Recycling and Disposal administrative rules:

- ARM 16.14.201

Specific enforcement authority:

- MCA 75-10-514, 541, & 542.
- ARM 16.14.201

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based upon the above-referenced guidance, the Motor Vehicle Recycling and Disposal (MVR&D) Program has identified the following program goals:

1. Require that junked motor vehicles in Montana be shielded from public view, or removed and recycled.
2. Require that all motor vehicle wrecking facilities be licensed and shielded from public view.
3. Provide funding for the establishment of county programs to assist in these goals.

3. Program Activities. In general terms, staff effort is divided between 15% licensing and 85% inspection and enforcement, but many enforcement actions involve licensing actions as well. Budgeting is not directly driven by this percentage. In very real and understandable terms, the state Motor Vehicle Recycling and Disposal Program is one of the more compliance and enforcement oriented environmental programs in the state. It simply requires motor vehicle wrecking facilities (MVWF or wrecking yards) to be licensed and screened and it requires all junked vehicles (JVs) to be shielded from

public roads. It's effectiveness is plainly visible and comparable with other areas or states without such a program. These activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg. Years Staff Retntn.</u>	<u>FY 1996 Projects/Sites</u>	<u>Avg. Acres/Site</u>	<u>Avg. # of new proj./yr</u>
Wrecking Yd Licensing	\$46,148			178(+36 pending)	N.A.	15
Co. Vehicle Graveyards				46	N.A.	3
Co. JV Grants & T/A	\$883,777			56 counties	5,932 JV's hauled FY 95	
Insp./Enforcement	\$78,623					
JV recycling contracts, admin & prog support	\$65,139			5	4,377 tons recycled	
total	\$1,073,688	3.71 ¹	2.8 yrs. ¹			

Notes:

¹ Includes: .21 FTE attorney (vacant since 11/24/95); 1 FTE Program manager (4½ years in Program); 1 FTE Environmental Specialist (14 months in Program); 1 FTE Info Systems Spec.(7 months in Program), and .50 FTE Administrative and Administrative Support.

source: Stankey, 1996.

Fees and Charges. The Motor Vehicle Recycling and Disposal (MVR&D) Program revenues from fees and charges are earmarked for use in the program. The amounts of all fees are set in statute. The revenue derived from the recycling of junked vehicles is variable depending on the number of vehicles collected and sold for recycling and the price of scrap metal. Additional information on fees and charges is presented in the table below.

<u>Type</u>	<u>Authorized Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:			
MVWF Licenses & Renewals	\$50/yr; both	\$9,513	MVR&D program
County MV graveyrd licnse	0	0	"
Junk Vehicle regis. fee	\$.50/vehicle lic.	\$421,168	"
Junk Vehicle title transf fee	\$1.50/vehicle lic.	\$342,138	"
JV Recycling revenue	market price/ton	\$238,693	"
Pvt MVWF vehicles at Co. yards	\$2/vehicle	0	"
Noncompliance Penalties:	varied	0	General Fund
MEPA Fees:	varied	0	MVR&D program
TOTAL:		\$1,011,512	

source: Stankey, 1996.

4. Regulated Communities. Any individual or business that owns or possesses an unlicensed motor vehicle which, because of its physical condition, is defined by statute as a junked vehicle, can be a part of this program's regulated community. Examples include auto repair shops, towing businesses, motor vehicle wrecking facilities, and individual vehicle owners. The counties of Montana can become part of the regulated community also, due to some mandates established under this program. The junked motor vehicle community is described below.

Private individuals are those vehicle owners who, for one reason or another, end up having derelict or "junk" motor vehicles on their property. Perhaps they were abandoned by others, former landowners or tenant renters for example, or perhaps they were an intended stock car project or parts vehicle that didn't happen. A motor vehicle which is inoperable, unlicensed and discarded, ruined, wrecked or dismantled is a junk vehicle by state law and is required to be shielded from public view (fenced, garaged, put over the hill, etc.) or removed. If the owner cannot license, make operable or shield the vehicle, he and the vehicle typically become the subject of neighborhood complaints and subsequent action by the program at the state or county level.

County Junk Vehicle Programs are required to be established by the county commissioners in each county (multi-county programs are allowed and in place). The county establishes a motor vehicle "graveyard" (CMVG) for the storage of junk vehicles and, as funds allow, provides for a free vehicle collection program and a compliance and enforcement program managed by county officials. The state provides annual grants to the counties to fund their programs. County vehicle graveyards are subject to shielding requirements and record keeping requirements.

Private Motor Vehicle Wrecking Facilities (MVWFs) are required to be licensed for operation by the program and are subject to shielding and record keeping requirements. New MVWF's cannot be licensed unless they can be shielded from public view (public roadways) and meet local zoning requirements or obtain location approval from the County Commissioners. Private MVWFs are required to keep junk vehicle inventory record information. The DEQ program cooperates with the Department of Justice Motor Vehicle Division to minimize stolen vehicle titling and registration problems.

5. Philosophical Approach to Compliance. The program goals include: that no junked motor vehicles be visible from public roadways in Montana, that they are screened from view or nudged into whatever recycling stream is available through program compliance and enforcement efforts. The program utilizes a combination of education and compliance inspections. The inspections are performed by either county program personnel, the state program personnel, or both. Self implementing administrative rules require licensed wrecking facilities and county vehicle graveyard facilities to remain in compliance with shielding, record keeping and licensing requirements. Informal enforcement actions are taken by program inspectors when minor violations are noted. Major violations are identified and documented by the inspector who then recommends an enforcement action to the program manager. The program manager reviews the information and decides on a course and level of enforcement based on the Program Enforcement Policy. If the course of action is determined to be judicial enforcement, a written enforcement request is developed and recommended to the division administrator. The division administrator then informs the department director and requests that the department Legal Unit be authorized to pursue the enforcement action.

6. Compliance Tools Available and Used. The program's formal inspection and enforcement procedures are documented in its *Enforcement Strategy Flow Chart and Narrative*. Enforcement tools include both formal and informal enforcement actions. Formal enforcement actions are license suspension, revocation, or denial, or civil or criminal judicial actions. Informal enforcement tools include other actions that seek to gain voluntary compliance, such as compliance plans, education, persuasion, warning letters or notices of violation.

The following enforcement authorities are provided in the Motor Vehicle Recycling & Disposal Act:

Administrative Enforcement:	75-10-514, MCA
Injunction:	75-10-541, MCA
Civil Penalties:	75-10-541, MCA
Criminal Penalties:	75-10-542, MCA

The menu of tools used by the Motor Vehicle Recycling and Disposal Program is shown on the following pages.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with the MVR&D program law and regulations are:

- One on one compliance inspections and visits from state or county program personnel which explain the program's requirements and provide alternatives for compliance.

- Peer pressure to repair, shield or remove derelict vehicles.
- Referral to and the availability of an active private vehicle salvage industry in the vicinity.
- Availability of a free junk vehicle removal service through the county programs.
- Judicial action with the possibility of the court awarding significant civil penalties.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: Pamphlet/brochures explaining program and removal services. On-site Technical Assistance Technical Seminars	Upon receipt of complaint regarding junk vehicles	state\County programs	N/A ¹
	When dealing with licensed, proposed or unlicensed motor vehicle wrecking facilities	state\County	N/A ¹
	Opportunities to provide on-site technical assistance for MVWF occur during inspections, at meetings between industry association and state, and at professional symposia.	state\County	250+
	Training opportunities for county program officials occur as needed with county staff changes and at statewide program meetings	state staff	50+
Comprehensive Planning/Withdrawals: Agency determination of lands unavailable for siting a MVWF or County MV graveyard.	When a proposed MVWF or new county vehicle graveyard site cannot be shielded from public roads due to the topography\proximity.	state staff	0
	When a proposed site could be too environmentally sensitive for the proposed use as determined through the MEPA process.	state staff	3
	When a resolution in opposition to the proposed facility location has been prepared and submitted to the agency by the County Commissioners in accordance with MCA Sect. 75-10-516.	Co. govt and state staff	4

STATE COMPLIANCE/ENFORCEMENT TOOLS -- MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Permits/Certifications/Bonds:			
County MV graveyard license	Issued to a county upon application provided the site meets shielding and land use requirements. Counties mandated to provide for a site. No fee	state staff	46
Private MVWF license	Issued to individuals\businesses upon application, \$50 annual license fee and provided site meets shielding and land use requirements.	state staff	7
	Newly proposed facility Conditionally Approved to be Licensed; License pending, shielding to be constructed before license issued.	state staff	4
License Renewal	Renewed annually; granted if no violations, \$50 annual license renewal fee Renewal requested; county inspection not yet performed.	state staff	178 36
MEPA: - EAs	The Department typically prepares Environmental Assessments (EAs) for new Motor Vehicle Wrecking Facilities and county motor Vehicle graveyards.	state staff	16
Opportunity for Public Comment	Public notices and opportunity for comment occur following agency receipt of a license application for a new wrecking facility or county vehicle graveyard and the preparation of an EA. Also, MCA 75-10-516 provides that adjoining property owners and the Co. Commission be notified of a proposed licensing action. The county is permitted to hold hearings and provide the agency with a resolution of support or opposition to the proposed licensing action.		32+
Certifications/or bond requirements	Not Authorized	N/A	N/A

STATE COMPLIANCE/ENFORCEMENT TOOLS -- MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections:			
Informal	Performed continuously on ad hoc, time-as-available, basis.	state\County	238+
Complaint-Generated Inspections	For failure to shield junk vehicles Failure to shield MVWF Failure to shield Co MV graveyards Operating a MVWF w/o a license	state\county state state state	over 2000 12+ 1 9+
Quarterly Reports	Private MVWFs required to send records and titles of vehicles placed in inventory every quarter to the Dept. of Justice Motor Vehicle Division	state\county\ Dept. of Justice	1005
Administrative Notices/Orders:			
Notice of Violation	Upon identification of violation; typically occurs in the field. Request for a compliance plan typically within 10 days; compliance schedule depends on individual circumstances and significance of violation, typically between 14 and 30 days for minor violations.	state\ county programs.	20+
Orders	Not authorized	N/A	N/A
Administrative Penalties\Sanctions:			
Penalties:	Not Authorized		
Sanctions: License Issuance, Revocation, Suspension or Denial	For violations of the law and rules and for fraud, title forgery, dealing in stolen parts.	Director ²	1
Appeals	To the Board of Environmental Review within 30 days of agency's decision to issue, deny or revoke license.	Board	

STATE COMPLIANCE/ENFORCEMENT TOOLS -- MOTOR VEHICLE RECYCLING AND DISPOSAL PROGRAM			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Judicial Civil Penalties: Penalties	Maximum \$50/day of violation; for MVWFs failure to keep and submit vehicle records to Mont. Dept. of Justice.	MDOJ Staff	0
Injunctions: Permanent	Maximum \$50/ day of violation; for violations of MVR&D Act law, rule or DEQ order.	District Court	0
Temporary	Only authorized when MVWFs or county MV graveyards operate in violation of law and/or rules.	District Court	0
Judicial Criminal Penalties: Misdemeanor	Misdemeanor charges may be filed for <u>willful</u> violations of the law; maximum fines of \$250 and/or 30 days in county jail. (tool predominantly used by county programs)	Director\county programs	57+

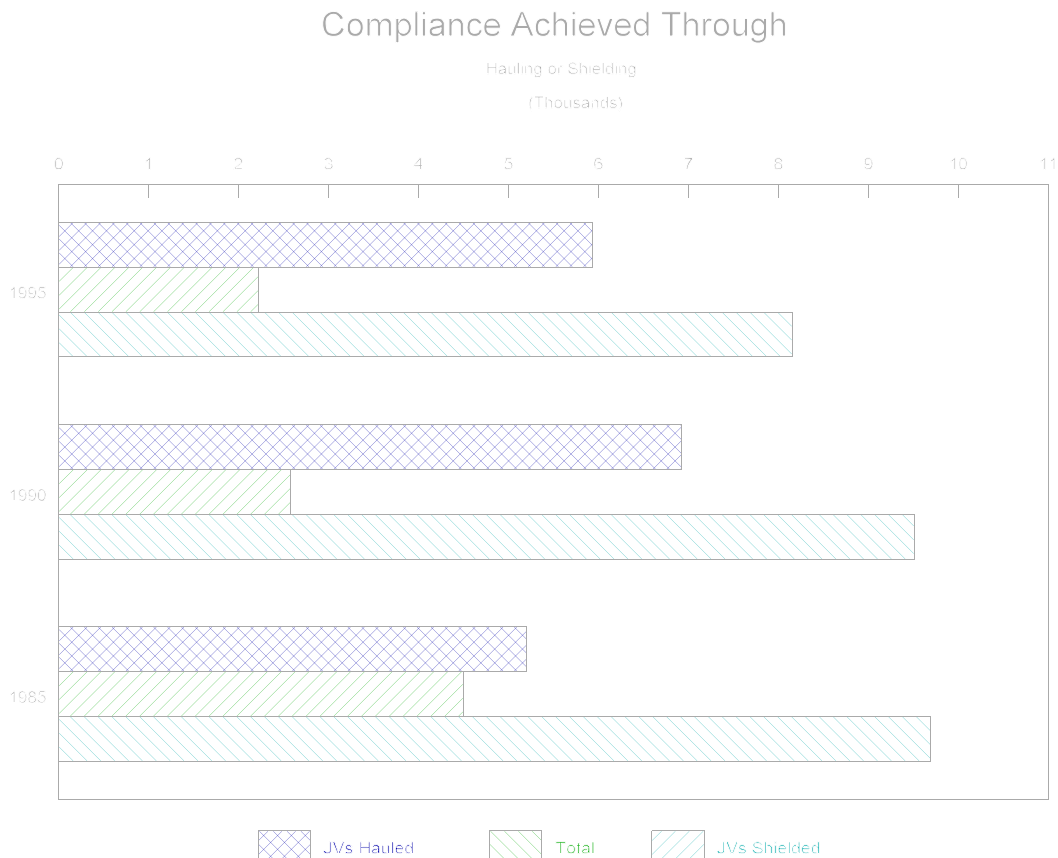
Notes:

¹ Numbers not kept of pamphlets distributed; routinely used as an educational and contact tool.

² Action recommended by program manager, reviewed and approved by supervisors and approved and authorized by director.

8. History of Compliance. Trends in compliance with the Motor Vehicle Recycling and Disposal Program rules and requirements are illustrated below. This state program is unique in that over \$865,000 in grants are provided to county governments to establish and implement their own programs. County programs range from those simply providing a free county motor vehicle graveyard site where people can dispose of their unwanted junk vehicles, to those which provide a site and a free vehicle collection service, to the most developed programs with large budgets and fully developed compliance and enforcement programs. Most of the inspections and compliance efforts which deal with individuals and small businesses are conducted by the county programs. State program staff provide compliance and enforcement services in counties needing assistance with difficult cases or in those counties which do not have a compliance and enforcement program. The state program staff also concentrates its efforts on licensed and unlicensed motor vehicle wrecking facilities. Any compliance and enforcement data that includes the state program staff efforts alone is not reflective of the program's total work.

Trends in compliance are shown below.



9. Violations. The resource commitment to enforcement/compliance equates to 85% of the total work performed by the state level program staff. Enforcement actions are limited due to the small office staff. According to the program, enforcement can only be as effective as the amount of resources available; limited resources result in limited enforcement.

Over 2,000 violations were documented during FY 95 by state and county program staff. Of these, 1,900 were of minor significance and were dealt with informally. Forty (40) were determined to be of moderate significance and were dealt with informally using a written compliance plan. The remainder (60 violations) were deemed major or significant and were dealt with as discussed below. The state program currently has 6 cases in litigation (all filed prior to FY 95) and has recently requested that 2 additional judicial enforcement actions be initiated. The program anticipates that 1 additional judicial action will be requested within the next month. Additionally, 57 cases have been referred by county program directors to county attorneys for appropriate legal action.

<u>1995 MVR&D Program violations by Type and Status</u>					
<u>Viols Discovered</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u>
2399	Individuals	Possession of Junk Vehicles Junk Vehicles in public view	0	Closed	57
361	MVWF	Dept of Justice Quarterly Report	Closed	0	
136	MVWF	Shielding Violations	0		3
8	MVWF	Failure to re-license	0	Closed	3
3	MVWF	Failure to license & shield	0	Judicial	3
31	CMVG	Failure to number inventory /shielding	0	Resolved	0

Notes:

1. Violations noted for MVWF= number in that category but there may be additional violations of a different category at any one facility.
2. 57 judicial actions are being taken by the county programs, 3 judicial actions have been requested by the state program, 6 judicial actions filed prior to FY 95 are still in court.

source: Stankey 1996.

Discovery of Violations. The program identifies and documents violations through two means: inspections performed by either the state or county personnel either independently or as the result of citizen complaints, and by review of information provided via the Department of Justice. Violations discovered and identified by an inspection are documented on an inspection report form; violations discovered through the review of Department of Justice information are recorded electronically in the program data base.

Group	Total	Violations Discovered, by method, 1995 ¹			Citizen Complaint
		Agency Review of Monitoring Reports	Self-Reporting of Violation	Inspection	
MVWF	531	391	0	136	4
Individual JV owners	2399	N/A	N/A		2,399
County MV graveyds	31	0	0	30	1
TOTAL	2961	391	0	166	2404

Notes:

1 Data incomplete because some counties not required to report these statistics.

source: Stankey, 1996.

10. Considerations in Calculating Penalties. The Motor Vehicle Recycling and Disposal Program has in place a written enforcement guide and strategy. The program utilizes a classification of major, moderate, or minor for the degree of significance in determining an appropriate enforcement response. These categories relate to: 1) the degree of deviation from the statutory or regulatory requirement, 2) the type of violation (i.e., aesthetic, operational or procedural), and 3) any pattern of repeat violations. Moderate/minor classifications are responded to commensurate with the seriousness of the violation and in accordance with a program policy and enforcement guideline. Minor or moderate violations are generally handled by identifying the violation(s) and negotiating a compliance plan to correct the violation within a reasonable time (usually 14 to 30 days). The time allowed in the compliance plan is discretionary and negotiable by the inspector and his/her supervisor and may be extended for good reasons, such as adverse weather conditions.

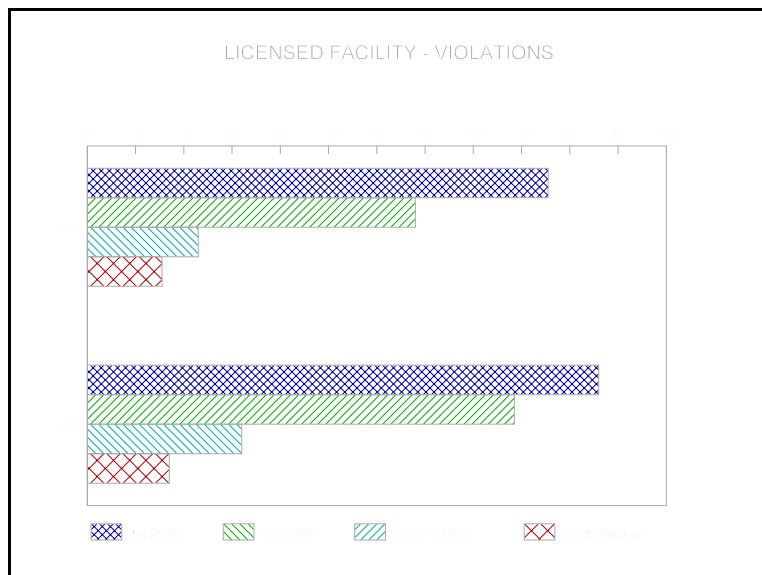
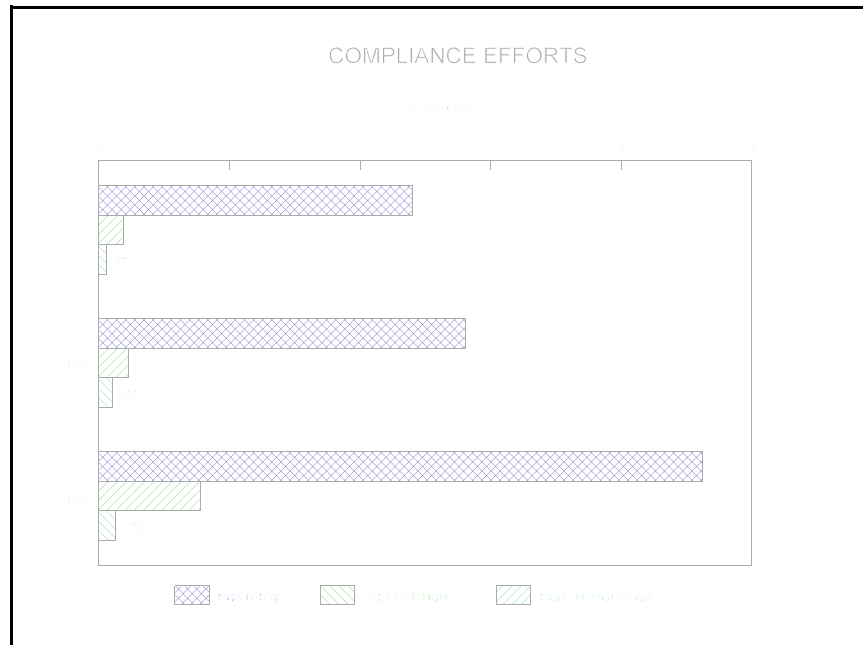
Major violations are partially defined in MCA Section 75-10-514, dealing with fraud, vehicle theft, and forgery. Recalcitrant facility operators or individuals are typically determined to be major violators and may be referred for formal enforcement action. A facility file review is conducted to identify recurrent violations for determining the appropriate enforcement response. Recurrent and repetitive violations increase the enforcement response to the next higher level. Thus, violators who are regularly found to have the same or many violations may be classified as major violators subject to formal enforcement actions.

When judicial enforcement actions are initiated, the program typically seeks the maximum penalty allowed under the statutes. Maximum penalties for this program are relatively low; \$50/day civil and \$250 criminal misdemeanor and/or 30 days in county jail.

11. Resolution of Noncompliances. According to program staff, this is not often a problem except for the priority of time and legal assistance. Staff estimates that 92% of program violations are resolved with a field visit and advice with an informal notice or warning. Of the remaining 8%, a more formal warning letter/notice of violation approach with a resolution by compliance plan scheme will resolve 70% of the remainder. The other 30% of the 8% become subject to judicial actions. This means that somewhere in the range of 2% of the total violations noted by the program go to court for resolution.

In recalcitrant cases, the program suffers from a lack of enforcement assistance and prioritization. Staff have suggested that the authorization of administrative civil penalties would be beneficial. An

indication of the number of contacts made by state and county program officials and compliance resolution is shown on the following page.



12. Current Compliance Priorities. Agency staff have identified the following priorities for the MVR&D program.

- Require that all motor vehicle wrecking facilities (MVWFs) be properly shielded and licensed.
- Require all junk vehicles to be shielded from public view in Montana.
- Require that all wrecking facilities comply with the Department of Justice reporting requirements in a prompt and timely manner.
- Require that county motor vehicle graveyards (CMVGs) comply with all other state and federal waste management requirements.

- The agency has identified the following short term priorities for the MVR&D compliance and enforcement program:
- Train new county program managers.
- Train all county program managers in compliance requirements, methods and techniques useful in obtaining an increased level of compliance within their jurisdictions.
- More effort on Tribal lands/co-operative agreements.
- Increased inspections of MVWFs and CMVGs by state staff.

13. Compliance Relationships with Other Agencies.

Oversight. The Montana Motor Vehicle Recycling and Disposal law has no federal counterpart. It is a state of Montana initiative funded entirely by vehicle registrations, wrecking yard licenses and the revenue (if any, depending on scrap steel markets) from recycling vehicles the program collects.

Partnerships. The DEQ program coordinates anti-theft and fraud efforts with the Department of Justice in requiring record keeping by MVWFs and by requiring junked vehicle titles to be submitted to the state.

Delegated Authority. The DEQ, MVR&D Program delegates most of its authority to the county junk vehicle programs. The state retains the authority to license MVWFs and county motor vehicle graveyards and its authority to contract for the crushing and recycling of vehicles collected in the county yards.

Hazardous Waste Program

The Hazardous Waste Program regulates hazardous waste and used oil handlers that are not required to obtain a permit and is responsible for the regulation of facilities that are required to obtain a permit for the treatment, storage, or disposal of hazardous waste.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Hazardous Waste program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II, Sec. 3** "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment..."
- **Montana Hazardous Waste and Underground Storage Tank Act** (MCA 75-10-401, et seq.) makes it public policy to protect Montana's public health, the health of living organisms and the environment from the effects of the improper, inadequate, or unsound management of hazardous waste.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Montana Solid Waste Management Act** (MCA 75-10-201 et seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et seq.)
- **The Montana Solid Waste Management Act** (MCA 75-10-201, et. seq.)

- **Comprehensive Environmental Cleanup and Responsibility Act** (MCA 75-10-701, et.seq.)

Related federal authorities:

- **Resource Conservation and Recovery Act (Subtitle C)**
- **Resource Conservation and Recovery Act (Subtitle D)**

Hazardous Waste administrative rules:

- ARM 17.54.101 et seq.

Specific enforcement authority:

- 75-10-413, MCA
- 75-10-414, MCA
- 75-10-416, MCA
- 75-10-417, MCA
- 75-10-418, MCA
- 75-10-424, MCA
- ARM 17.54.155

Primacy/jurisdictional agreements:

- State program approval and primacy from federal Environmental Protection Agency

2. Program Goals. Based on the above-referenced guidance, the Hazardous Waste Program has identified the following program goals.

1. To administer the program in a manner that provides the greatest protection of public health and the environment from the deleterious effects of improperly managed hazardous waste. Implement adequate planning, maintain budgetary controls, provide adequate staff supervision, and negotiate State/EPA agreements that are consistent with state policies and priorities.
2. To obtain authorization for all program components which have counterparts in the federal program under the Resource Conservation and Recovery Act. Maintain and enhance the resources necessary to execute authorized functions, adopt required administrative rules necessary to exercise regulatory authority, and submit authorization revision applications to EPA as soon as possible.
3. To insure that hazardous waste treatment, storage and disposal facilities are properly designed, maintained, and operated. Approve or deny facility permit application, issue new operating permits or permit modifications as expeditiously as possible, and insure compliance with permit conditions at permitted facilities through regular compliance evaluation inspections.
4. To assure regulatory compliance at sites where hazardous waste is generated, transported, recycled or otherwise handled by conducting regular comprehensive compliance evaluation inspections at those installations that offer the greatest threat to public health and the environment.
5. To provide technical and compliance assistance to hazardous waste handlers at every opportunity possible in order to maintain and enhance regulatory compliance and to assist in minimizing the amount of hazardous waste generated in Montana.

6. To initiate timely and appropriate enforcement actions against significant violators which are

consistent with the State/EPA enforcement agreement in order to offer a deterrence for future noncompliance and to remove economic incentives for noncompliance.

3. Program Activities. The major activities of the Hazardous Waste Program are performed by two Units; 1) the Regulatory Unit which is responsible for the regulation of hazardous waste and used oil handlers that are not required to obtain a permit, and 2) the Permitting Unit which is responsible for the regulation of facilities that are required to obtain a permit for the treatment, storage, or disposal of hazardous waste. These activities are described in more detail below.

Program Activities	FY 96 Budget	FY 96 FTEs ¹	Avg. Years Staff Retntn.	1995 Ongoing Project/Sites	Ave. Acre/Site	Ave. # of new project/Yr
Regulatory Unit	\$231K	4	2.5	252 ²	N / A	N / A
Permitting Unit	\$342K	6	2.5	12 ³	N / A	N / A

¹ Does not include 1.0 FTE Program Manager, 0.88 FTE Attorney, and 4.32 FTES of Administrative and Clerical Support

² The regulated Community in FY 95 consisted of:
 94 Large Generators
 150 Small Generators
 58 Transporters
 50 Used Oil Handlers
 (Conditionally exempt generators are not quantifiable)

³ Number of facilities subject to permitting requirements

source: Vidrine, 1996

Fees and Charges. Hazardous Waste Program revenues from fees and charges are described below. The program can assess fees for filing and review of hazardous waste management facility permits. The program can also assess tonnage fees from generators of hazardous waste. The program has authority to assess fees associated with new facility permit applications and from the operation of commercial facilities. To date, the department has received a \$50K application fee from Ash Grove. No other fees have been collected. Advanced Environmental Technical Services (formerly Special Resource Management), Rocker, was issued a permit to operate a commercial hazardous waste storage facility in 1992, but has elected not to construct the facility to date. There are currently no commercial hazardous waste management facilities in operation.

All other fees associated with permit modifications and renewals and generator registration are deposited in the state General Fund. In FY 95, the program collected \$31,165 generator registration fees and \$3,400 permit modification fees (see next page).

<u>Type</u>	<u>Authorized Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
<u>Permit Fees:</u>			
<u>TSDF¹ Application</u>	\$10K-150K	- 0 - ²	Program Admin.
<u>Reissuance</u>	\$2K-10K	\$2K	General Fund
<u>Modifications</u>	\$100-1500	\$3K	General Fund
<u>Commercial T.D.</u>	\$4 - 8 / ton	- 0 - ³	Program Admin.
<u>Generator Fees</u>	\$75 - 1500	\$31K	General Fund

¹ Treatment, Storage, and Disposal

² Authority to assess fees granted in 1993. New applications to operate facilities are not anticipated in the foreseeable future.

³ Only one commercial facility permit has been issued (SRM). The permittee has not constructed the facility to date.

source: Vidrine, 1996.

4. Regulated Communities. The Hazardous Waste Program regulates the following entities:

Treatment, Storage and Disposal Facilities (TSDs)

With certain exceptions, individuals who treat, store or dispose of hazardous waste are required to obtain a permit. Typical waste management units that would require a permit include container or tank system storage, surface impoundments, waste piles, land treatment units, landfills, incinerators, and boilers and industrial furnaces which burn hazardous waste. The permits identify the administrative and technical standards which facilities must adhere. In addition, permitted facilities are also subject to "corrective action" requirements to address releases of hazardous waste or hazardous constituents to environmental media.

Permits are required for operating facilities and for those facilities which previously operated land disposal units in which residuals of hazardous waste remain in place (post-closure care permits). Five facilities have been issued operating permits for ongoing hazardous waste management activities. Seven facilities are subject to post-closure care permits.

Hazardous Waste Generators, Transporters, & Used Oil Fuel Handlers

Hazardous waste generators, transporters, and used oil fuel handlers are not required to be issued hazardous waste management permits but are rather subject to self-implementing regulatory requirements.

There are three categories of hazardous waste generators: large generators produce more than 2,200 pounds of hazardous waste, or more than 2.2 pounds of acute hazardous waste, within a calendar month; small generators produce more than 220 pounds, but less than 2,200 pounds of hazardous waste, within a calendar month; and conditionally exempt generators produce less than 220 pounds of hazardous waste in a calendar month. The level of regulatory controls increase with the amount of hazardous waste generated. Thus, large generators are subject to the most stringent requirements, while conditionally exempt generators are subject to the least stringent requirements. In 1995, 94 large generators and 150 small generators were registered with the program. The number of conditionally exempt generators is unknown as this category of generator is not required to register or file reports of hazardous waste management activity.

Businesses that transport hazardous waste are required to possess an EPA identification number issued by the program and comply with certain transportation requirements. In 1995, 58 transporters were registered with the program. Of that amount, 13 were private carriers and 45 were "for-hire".

Businesses that market used oil fuel, or in some cases burn used oil fuel in industrial boilers or furnaces, are also required to possess an EPA identification number and comply with applicable used oil management requirements. In 1995, 50 burner/blenders of used oil fuel were registered with the program.

5. Philosophical Approach to Compliance. It is the experience of the program that the highest rate of compliance is achieved when resources are directed towards providing compliance assistance to the regulated community, maintaining a high profile within the regulated community through regular compliance evaluation inspections, and initiating enforcement actions, both formal and informal, to gain a return to compliance and to remove the economic incentive for further noncompliance. Allocation of resources in the three areas need to be carefully balanced to achieve maximum benefit. This balance is established by carefully monitoring the results of program efforts and making adjustments in resource allocations as needed.

6. Compliance Tools Available and Used. The program provides compliance assistance to the regulated community and ensures compliance through inspections and enforcement actions. Compliance assistance consists primarily of informational efforts which are designed to assist the regulated community in gaining and maintaining compliance with regulatory requirements. Compliance assistance is routinely incorporated into compliance evaluation inspections and other daily interactions with the regulated community. The primary audience of the program's compliance assistance efforts are smaller businesses who generally do not have the resources to stay abreast of complex environmental protection regulations. The program enjoys its greatest compliance assistance success from interacting with handlers who lack of an understanding of the requirements as opposed to handlers who wish to avoid compliance to gain an economic advantage or who otherwise choose to ignore requirements.

On-site inspections play an important role in ascertaining the level of compliance at individual hazardous waste management sites and provide the program with information associated with the regulated community's overall rate of compliance. The information gained from inspections may be used to target certain industries or geographical areas for increased compliance assistance or enforcement efforts. On-site inspections also instills a perception within the regulated community of the program's presence which reinforces the need to maintain compliance.

It is the experience of the program that only a small percentage of hazardous waste handlers willfully disregard regulatory requirements. However, in some cases noncompliance can be very damaging to the environment or can serve to provide financial gain for violators, thereby placing competing businesses at an economic disadvantage. In such cases, appropriate enforcement actions are necessary to restore environmental damage, to remove the violator's economic incentive for noncompliance, and to ensure a level playing field for other competing businesses who are in compliance. The table on the next page illustrates compliance tools available and used by the Hazardous Waste Program:

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.:			
On-Site Technical Assistance	During inspections or at the request of handlers	Program Staff	N/A ¹
Compliance Assistance	Integrated into all interactions with the regulated community	Program Staff	N/A ¹
Fact Sheets/Publications	Distributed upon request, upon registration, or adoption of rules which may impact particular handlers	Program Staff	N/A ¹
Workshops/Meetings	Upon request	Program Staff	15
Comprehensive Planning/Withdrawals	N/A	N/A	N/A
Permits/Certifications/Bonds			
Operating Permits	Issued to owners or operators of new treatment, storage or disposal facilities	Director Approval	0.00
Closure/Post Closure	Issued to owners or operators of facilities who have ceased active management of hazardous waste in regulated units.	Director Approval	2
Modifications	Issued to permittees upon their request or upon the department's initiation	Director Approval	1
Bonding Requirements (financial assurance)	Prior to issuance of a permit, the prospective permittee must demonstrate financial assurance through corporate test ratios, letters of credit, or documented trust funds.	Program Staff	unknown
Monitoring/Inspections:			
Informal Inspections (Compliance Meetings)	Performed continuously ad hoc as compliance assistance/information effort dictates	Program Staff	unknown
Formal Inspections	The program institutes a formal inspection schedule. Candidates are selected on their potential to be in noncompliance. The program looks at the type of business or activity that have had historical difficulty with compliance to help set their inspection schedule. The program looks at an entities compliance history.	Program Staff	291

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Complaint-Generated Inspections	Upon receipt of allegation of noncompliance	Program Staff	30
Sampling	The program is authorized to take samples from any soil or ground water or from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for the substances, used oil, or wastes.	Program Staff	2
Ordered Monitoring	If the program determines that the presence of a regulated substance or hazardous waste or the release of the regulated substance or waste or any waste constituent may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.	Program Staff	unknown

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders:			
Notice of Violation/Warning Letter	Upon identification of violation. The program may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.	Program Staff	31
Administrative Orders	The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance, used oil, or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance, used oil, or hazardous waste. The order must direct the person to clean up and remove the regulated substance, used oil, or hazardous waste, to treat the regulated substance, used oil, or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered reasonable by the department.	Director Approval	3

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Penalties/Sanctions: Penalties:	<p>The department may assess a person who violates a used oil or hazardous waste provision or a used oil or hazardous waste rule an administrative penalty, not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed \$100,000 for any related series of violations. Assessment of an administrative penalty must be made in conjunction with an authorized order or administrative action.</p> <p>In determining the appropriate amount of an administrative penalty, the department shall consider:</p> <ul style="list-style-type: none"> (a) the gravity and the number of violations; (b) the degree of care exercised by the alleged violator; © whether significant harm resulted to public health or the environment; and (d) the degree of potential significant harm to public health or the environment. <p>Administrative penalties collected must be deposited in the state general fund.</p>	Director	2

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action:			
Penalties:	Any violation of the statute or rules or an order of the department or the board, or a permit is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation.	Director Approval	1
Injunctions:	<p>The department may ask a court for injunctive relief to:</p> <ol style="list-style-type: none"> 1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment; 2) enjoin a violation of the statute, a rule adopted under the statute, an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit; or 3) require compliance with the hazardous waste statutes, a rule adopted under the hazardous waste statutes, an order of the department or the board, or a permit provision. 4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may seek to recover the amount in an appropriate district court. 	Director Approval	unknown

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARDOUS WASTE PROGRAM

Tools Authorized by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Criminal Judicial Action:	<p>Criminal judicial actions are triggered if a person is guilty of an offense under the hazardous waste statutes if the person knowingly: (a) transports any hazardous waste to an unpermitted facility; (b) treats, stores, or disposes of hazardous waste subject to regulation under the hazardous waste statute or the rules without a permit or contrary to a material permit condition; © omits material information or makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for compliance with provisions of this part or rules adopted under the hazardous waste statutes pertaining to the handling of hazardous waste; (d) generates, stores, treats, transports, disposes of, or otherwise handles any used oil or hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of these statutes, an order issued or rules adopted; or (e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.</p> <p>A person who is guilty of an offense under subsection 1) is subject to a fine of not more than \$25,000 per violation or imprisonment for a period not to exceed 3 years, or both. Each day of violation constitutes a separate violation.</p> <p>A person who knowingly violates any requirement of hazardous waste statutes or any rule or material permit condition issued [except those violations specified in subsection (1)] regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to \$5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.</p> <p>Upon a second conviction for a violation of this section, the maximum penalties specified must be doubled.</p>	Director Recommended/ Court Decision	none

1. On-going basis. Not quantifiable

7. Incentives for Compliance. For permitted operating facilities, the greatest incentive for compliance is the threat of permit revocation for noncompliance. Operating facilities are generally able to reduce waste management costs by retaining their permits. Permits are revocable by the department if there is sufficient cause, such as violation of permit conditions. The threat of penalties for noncompliance is also an incentive for permitted operating facilities to comply.

For facilities subject to post-closure permitting requirements (hazardous waste management units are closed) and the universe of handlers who are not subject to permitting requirements, such as generators, transporters, and used oil handlers, the incentives for compliance include the possibilities of penalties being assessed by the department for violations and associated litigation costs. Additionally, many businesses comply because they wish to avoid publicity associated with department enforcement actions. The program routinely prepares press releases associated with formal enforcement actions.

Agency-Generated. Compliance assistance is incorporated into program activities at every possible opportunity. The following summarizes some of the program's compliance assistance activities:

- Handbooks and fact sheets have been developed for businesses which translate complex regulatory requirements into plain English.
- Copies of proposed and final rules are provided to those most likely to be affected and to those who specifically request the information.
- Generator registration is used as an opportunity for staff to assist businesses in identifying their hazardous waste streams and waste management responsibilities.
- Compliance evaluation inspections are used as opportunities to assist businesses in identifying waste minimization opportunities and alternative waste management practices which seek to gain and maintain compliance.
- Workshops which assist businesses in identifying their hazardous waste management responsibilities are conducted periodically.
- Program staff participate in speaking engagements before industry groups and other interested parties regarding proper hazardous waste management.

Industry-Generated. Not applicable

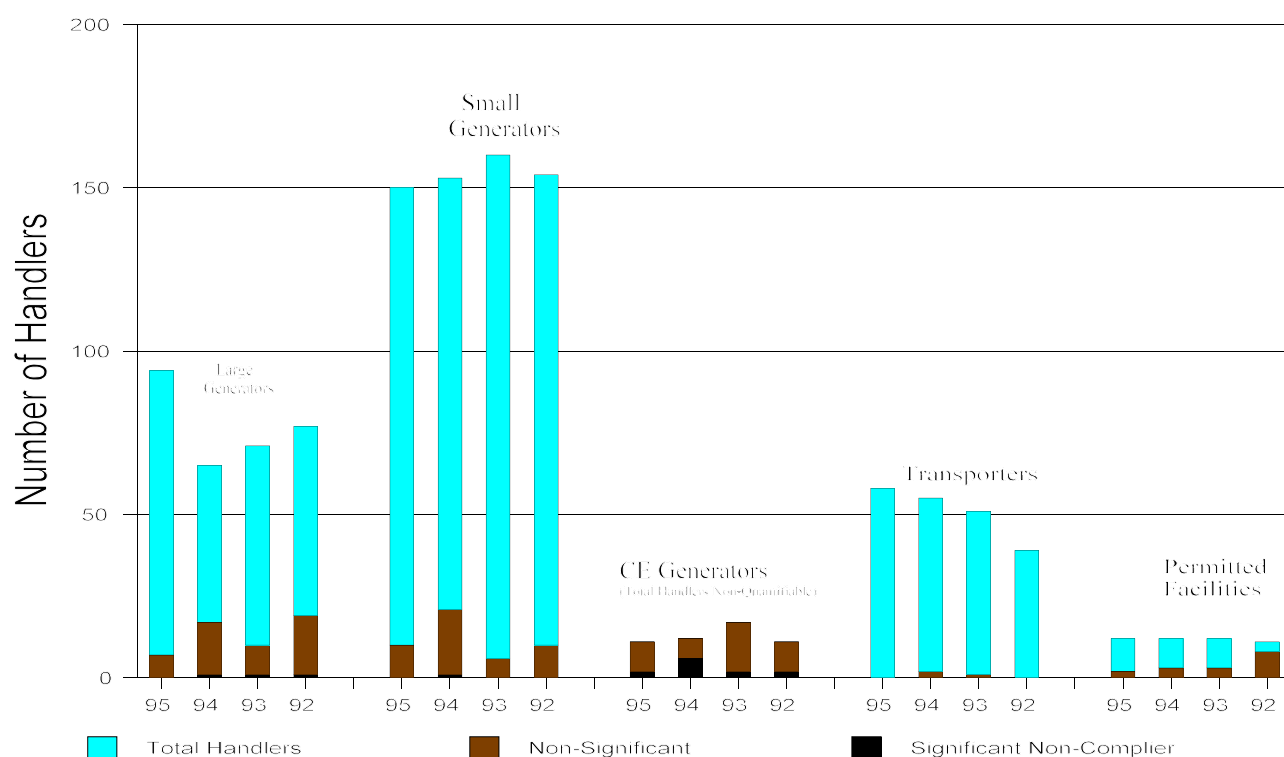
Other. Not applicable

8. History of Compliance. Trends in compliance with the hazardous waste program's requirements are illustrated below. For purposes of clarification, the Hazardous Waste Program provides the following definitions:

Significant Noncomplier: Is considered a "high priority" violator who:

- 1) has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents; or
- 2) is a chronic or recalcitrant violator; or
- 3) deviates from terms of a permit order or decree by not meeting the requirements in a timely manner and/or failing to perform work as required by terms of permits, orders, or decrees; or
- 4) substantially deviates from the Resource Conservation and Recovery Act statutory or regulatory requirements.

Nonsignificant Noncomplier: Is all other handlers that are not significant noncompliers.



source: Vidrine, 1996.

9. "Violations." The program initiated 31 informal enforcement actions and 4 formal enforcement actions in FY 95. The program currently has 6 cases in litigation. There are currently no outstanding enforcement requests.

The following table illustrates the types and status of enforcement actions initiated in FY 95.

**1995 Hazardous Waste Program Violation by Type and Status
(October 1, 1994 - September 30, 1995)**

Issue Month	Handler Type	Violation Description	Penalty	Year End Status	High Priority Violator ¹
October 1994	Large Generator	No Land Disposal Restriction Notification	-	Resolved	-
October 1994	Small Generator	Exceeded Accumulation Times	-	Resolved	-
October 1994	Exempt Generator	Failure to Characterize Waste	-	Resolved	-
October 1994	Small Generator	Various Container Management Violation	-	Resolved	-
October 1994	Small Generator	Various Container Management Violation	-	Resolved	-
October 1994	Large Generator	Exceeded Accumulation Times	-	Resolved	-

**1995 Hazardous Waste Program Violation by Type and Status
(October 1, 1994 - September 30, 1995)**

Issue Month	Handler Type	Violation Description	Penalty	Year End Status	High Priority Violator ¹
October 1994	CE Exempt Generator	Halogenated Solvent Registration	-	Resolved	-
October 1994	Large Generator	Various Container Management Standards Violation	-	Resolved	-
November 1994	Large Generator	Container Management Standards Violation	-	Resolved	-
November 1994	Large Generator	Container Marking / Dates Violation	-	Resolved	-
December 1994	Treatment Storage or Disposal Facility	Permit Condition Violation	-	Resolved	-
December 1994	Used Oil Handler	Failure to Notify Re: Used Oil	-	Resolved	-
December 1994	Large Generator	Container Violation	-	Resolved	-
December 1994	Small Generator	Open Container	-	Resolved	-
December 1994	Small Generator	Various Container Management Violation	-	Resolved	-
December 1994	Treatment Storage or Disposal Facility	Container Marking Violation	-	Resolved	-
December 1994	CE Exempt Generator	Failure to Characterize Waste	-	Resolved	-
December 1994	CE Exempt Generator	Unlawful Transportation	-	Unresolved	High
December 1994	Small Generator	Open Hazardous Waste Containers	-	Resolved	-
January 1995	Large Generator	Treatability Study Requirements	-	Resolved	-
January 1995	CE Exempt Generator	Unlawful Disposal	-	Resolved	High
February 1995	Small Generator	Failure to Maintain Registration	-	Resolved	-
March 1995	CE Exempt Generator	Failure to Characterize	-	Resolved	-
March 1995	Small Generator	Open Hazardous Waste Container	-	Resolved	-
April 1995	Treatment Storage or Disposal Facility	Financial Responsibility Violation	-	Resolved	-
April 1995	Treatment Storage or Disposal Facility	Financial Responsibility Violation	-	Resolved	-
May 1995	Used Oil Handler	Failure to Notify Re: Used Oil Marketing	-	Resolved	-
May 1995	Large Generator	No Generation Logs	-	Resolved	-
June 1995	Small Generator	Failure to Characterize Waste	-	Resolved	-
June 1995	CE Exempt Generator	Failure to Characterize	-	Resolved	-
June 1995	Small Generator	Failure to Maintain Current Registration	-	Resolved	-
August 1995	Small Generator	Exceeded Accumulation Times	-	Resolved	-
September 1995	Large Generator	Exceeded Accumulation Times	-	Resolved	-

¹ A "high priority" violator is a handler who:

(1) has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents; or

(2) is a chronic or recalcitrant violator; or

(3) deviates from terms of a permit order or decree by not meeting the requirements in a timely manner and/or failing to perform work as required by terms of permits, orders, or decrees; or

(4) substantially deviates from the Resource Conservation and Recovery Act statutory or regulatory requirements.

Discovery of Violations. The program identifies and documents violations through on-site inspections and by review of records, reports, or other information submitted by handlers required by permit conditions, or requested by the program. Violations are documented in inspection reports and tracked in an electronic data management system.

The following table illustrates the method of violation discovery by handler types:

DISCOVERY OF VIOLATIONS (1995)

Handler Type	Total	Record Review	Self Reporting	Compliance Evaluation Inspection	Citizen Complaint
Treatment Storage or Disposal Facility	4	3	-	1	-
Large Generator	7	-	-	7	-
Small Generator	14	-	-	14	2
Conditionally Exempt	6	-	-	6	2
Used Oil	1	-	-	1	-
Transporter	1	-	-	1	-

source: Vidrine, 1996.

10. Considerations in Calculating Penalties. The Hazardous Waste Program has in place a penalty policy for calculating penalties. The penalty calculation system consists of 1) determining a gravity-based penalty for a particular violation from a penalty assessment matrix, 2) adding a "multi-day" component to account for a violation's duration, 3) adjusting the sum of the gravity-based and multi-day components up or down for case specific circumstances, and 4) adding to this amount the appropriate offset for economic benefit gained through non-compliance.

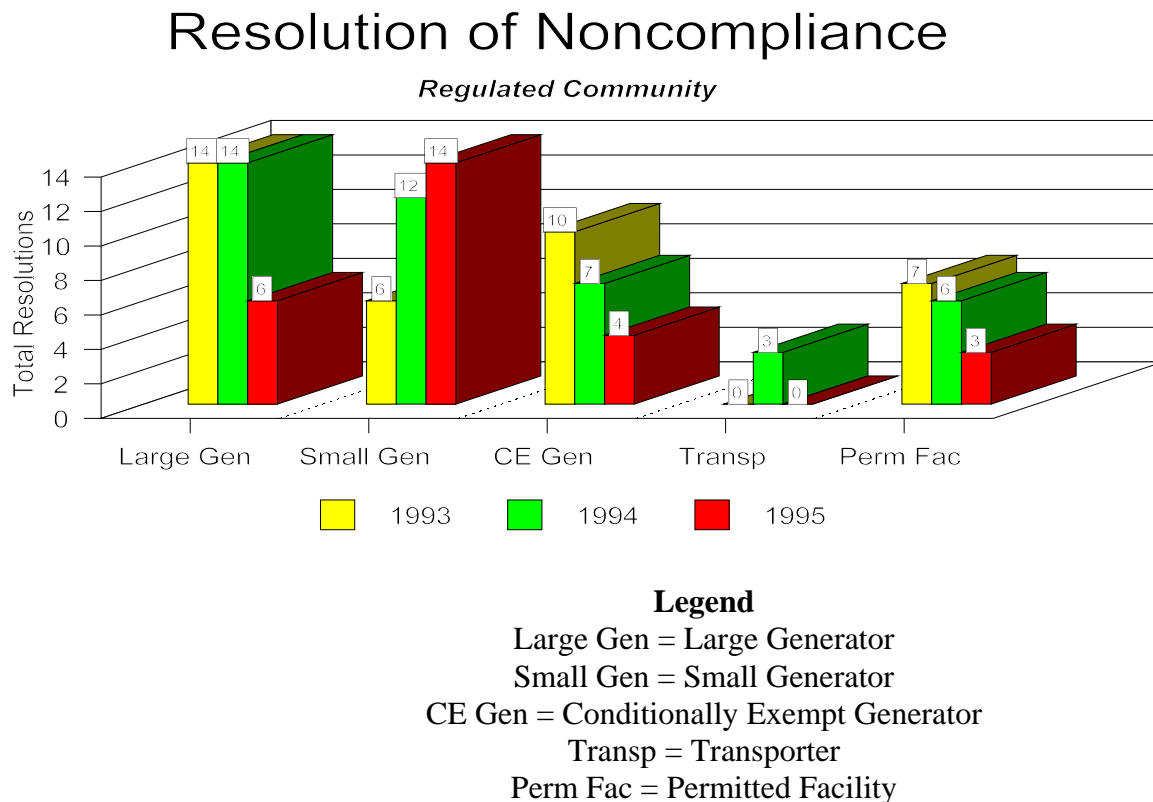
In administrative penalty cases, two separate calculations are performed: 1) to determine an appropriate amount to assess in the administrative order or other administrative action, and 2) to explain and document the process by which the department arrived at the penalty figure it has agreed to accept in settlement.

In civil judicial cases, the department will use the narrative penalty assessment criteria set forth in the policy to plead and argue for as high a penalty as the facts of a case justify, and will prepare a calculation which applies this policy to lay out the rationale behind any penalty amount the department agrees to accept in settlement. It is only at this time, after the complaint has been filed, that an adjustment for the violator's ability to pay may be considered.

11. Resolution of Noncompliances. The program seeks resolution of all noncompliance. An escalation of enforcement actions is initiated where previous actions have been unsuccessful in gaining a return to compliance. In some cases, litigation may extend several years before violations are resolved. Final resolution

of violations is reached when the violator has demonstrated compliance with conditions specified in formal or informal administrative enforcement actions or with conditions prescribed by the court.

The following table illustrates resolution of noncompliance for segments of the regulated community:



source: Vidrine, 1996.

12. Current Compliance Priorities. Agency staff have identified the following FY 1996 priorities for the Hazardous Waste Program:

Regulatory Unit: Compliance evaluation inspections will be conducted at handler sites that contribute the most benefit to protecting public health and the environment. Criteria for selecting inspection candidates include, but are not limited to, length of time from previous inspection, likelihood for the handler to be in violation of regulatory requirements, compliance history, industry type, quantity and toxicity of hazardous waste generated, and site-specific environmental setting or other conditions which may increase the likelihood of adverse environmental or public health effects caused by improper management of hazardous waste.

Compliance evaluation inspections are planned for 100 percent of registered large generators, 50 percent of registered small generators, 10 percent of known conditionally exempt generators, a minimum of 90 non-notifiers, 50 percent of "for hire" hazardous waste transporters, and 100 percent of used oil collection centers, transporters, transfer facilities, and processors/re-refiners.

Permitting Unit: A minimum of one compliance evaluation inspection will be conducted at all facilities subject to permitting requirements. A post-closure care permit is scheduled to be issued to the Conoco Refinery. Major permit modifications are scheduled for Malmstrom Air Force Base, Exxon Refinery, and B.N. Paradise permitted facilities. The program will continue to lead corrective action activities at Transbas and will

assume the lead from EPA at B.N. Paradise, Exxon Refinery, and Conoco Refinery contingent upon reaching established permitting milestones.

13. Compliance Relationships with Other Agencies.

Oversight. The hazardous waste program has received authorization from the U.S. EPA. The EPA annually develops a RCRA Implementation Plan which identifies the national direction and priorities for implementing RCRA Subtitle C programs and which forms the basis for EPA and State workload negotiations for the upcoming year. The EPA conducts oversight of the state program to ensure that enforcement and other agreements are being complied with, work outputs specified in work plans is being performed by the program, and generally, that the state program is consistent with the federal program.

Partnerships. The Hazardous Waste Program partners with the Montana State University Pollution Prevention Program, when it is of mutual benefit, to provide businesses with information regarding waste reduction and regulatory requirements.

Delegated Authority. The Montana Hazardous Waste and Underground Storage Tank Act does not have provisions for the delegation of the department's authorities.

Underground Storage Tank Release Prevention Program

The Underground Storage Tank Release Prevention Program regulates the underground storage of petroleum products and hazardous chemicals. The program also permits the installation, closure, repair and modification of new and existing underground storage tank systems and it licenses individuals who engage in the business of installing, closing, repairing and modifying underground storage tanks and piping. Through compliance assistance efforts and regulatory oversight, the program seeks to prevent the accidental release of petroleum and hazardous chemicals into ground water and the environment.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Underground Storage Tank Release Prevention Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Montana Constitution, Art. II Section 3 and Art. IX Section 1**
 1. Constitutional goals: Maintain and improve a clean and healthful environment for present and future generations.
- **Montana Hazardous Waste and Underground Storage Tank Act** MCA Sec 75-10-401 et.seq.
- **Montana Underground Storage Tank Installer and Licensing and Permitting Act** MCA Sec 75-11-201 et.seq.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et. seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)
- **Clean Air Act of Montana** (MCA 75-2-101, et. seq.)

Related federal authorities:

- **Resource Conservation and Recovery Act (RCRA)** Subtitle I
- **RCRA section 9003 (h)**

Underground Storage Tank Rules:

- ARM 16.45.101-1240

Specific enforcement authority:

- **Montana Hazardous Waste and Underground Storage Tank Act**:
 - a. Administrative Rules: §75-10-405(2)(c);
 - b. Administrative Enforcement: §75-10-413;
 - c. Injunctive Relief: §75-10-414;
 - d. Civil Penalties: §75-10-417;
 - e. Administrative Penalties: §75-10-423.
- **Montana Underground Storage Tank Installer Licensing and Permitting Act**:
 - a. Administrative Rules: §75-11-204;
 - b. Administrative Enforcement: §75-11-218;
 - c. Injunctive Relief: §75-11-219;
 - d. Civil Penalties: §75-11-223;
 - e. Criminal Penalties: §75-11-224.
- **Primary and jurisdictional agreements**:
 - a. State program approval and primacy from federal EPA.
 - b. State program\Assiniboine Sioux cooperative agreement.
 - c. State\EPA Cooperative Enforcement Agreement.
 - d. State program inspection contracts with 32 local government units.

2. Program Goals. Based on the above-referenced guidance, the Underground Storage Tank Release Prevention Program has identified the following program goals:

1. To establish, administer, and enforce an underground storage tank leak prevention program for petroleum products and hazardous chemicals;
2. To remedy violations of underground storage tank requirements established under the Montana Hazardous Waste and Underground Storage Tank Act [§§75-10-401, et.seq., MCA];
3. To establish, administer, and enforce an underground storage tank installer\remover and inspector program through permitting, licensing and/or certification, and inspections.
4. To remedy violations of underground storage tank requirements established under the Montana Underground Storage Tank Installer Licensing and Permitting Act [§§75-11-201, et.seq., MCA].

3. Program Activities. In general, the Underground Storage Tank Release Prevention Program (USTRP) seeks to regulate the installation, removal, and management of underground storage tanks used to store liquid petroleum products and hazardous chemicals such that releases are 1) prevented and/or 2) detected quickly, thereby protecting public health, safety, and the environment.

These activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg. Years Staff Retntn</u>	<u>1995 Program Projects</u>	<u>Activities</u>
Administration	\$106,700	1.26	5.4 yrs	1	
Program Support	126,706	3.10	2.5 yrs	2	
Permitting\licensing	146,712	2.5	2.25 yrs	999 permits ³ 280 licenses	
Compliance/ Enforcement ⁴	286,755	5.0 ⁵	1.83 yrs	354 inspections	
sub total	\$666,873				
Local Govt... grants	\$126,000			32 local governmental units	349 inspections ⁶
TOTAL	\$792,873	11.86 auth.			

- ¹ Includes program management and pro-rated portion of division administration costs.
- ² Includes clerical and database support activities.
- ³ Activities include preparation and review of environmental assessment for permitted projects.
- ⁴ 2.0 FTEs assigned to permitting and licensing also have regulatory/compliance responsibilities.
- ⁵ Includes 0.5 FTE attorney.
- ⁶ Includes 276 compliance inspections and 73 installation/closure inspections.

source: Gessaman, 1996.

Fees and Charges. The Underground Storage Tank Release Prevention Program revenues from fees and charges are described below. Maximum tank notification and permit fees are set by statute. Installer licensing and tank installation permitting fees are set by rule. The USTRP Program derives approximately 76% of its funding from state special revenues. It also receives a federal EPA grant. The EPA UST Release Prevention Program grant for FY 96 totals \$141,474. The federal grant requires a 25% state dollar match totalling \$47,158 for FY 96. The state matching funds are from the Hazardous Waste/CERCLA Account [RIGWAT (RIT) Interest]. The program receives no General Fund monies.

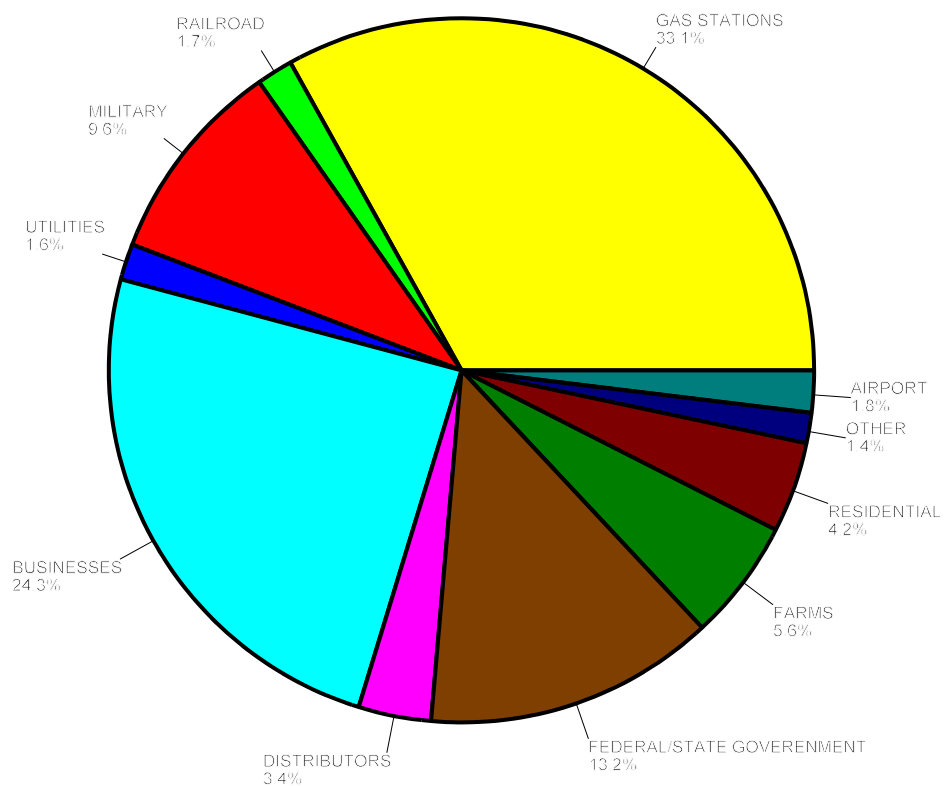
TOTAL FY 95 Fee Revenues:		\$452, 671	
<u>Type</u>	<u>Authorized Amount</u>	<u>Total</u>	<u>Uses</u>
Tank Registration Fees	\$20/yr. ≤ 1,100 gallons \$50/yr. > 1,100 gallons	\$350,760 ¹	UST Program/ local governments
Installer Licensing Fees	\$100 - Application & Exam Fee \$50 - Renewal Fee \$10 Duplicate License Fee	²	UST Program
Permit Review & Installation Inspection Fees	Varied	\$99,411 ³	UST Program/ local governments
Noncompliance Penalties:	varied	\$2,500	General Fund

- ¹ FY 95 tank registration fee collections
- ² FY 95 license fees estimated at \$14,000. The UST Program does not maintain separate reporting centers for the accounting of licensing and permitting fee collections.
- ³ Combined FY 95 permit and license fees.

source: Gessaman, 1996.

4. Regulated Communities. Consistent with the activities noted above, the program interacts with a variety of regulated communities. The regulated community for the UST Release Prevention Program includes any "person", as defined in §75-1-403(12), MCA, who owns or operates an underground storage tank system, is a licensed tank installer, is a licensed tank inspector, does tank or line testing, or anyone who deposits regulated substances in an underground storage tank system. The universe of tank owners and operators consists of federal, state and local government agencies, schools, hospitals, railroads, service stations, utilities, convenience stores, farms and other industrial and commercial enterprises that have either petroleum or chemical storage tanks. The current regulated community of underground tank owners/locations is shown on the next page.

ACTIVE TANK OWNERSHIP BY FACILITY



5. Philosophical Approach to Compliance. Because of the nature and size of the regulated community, DEQ is focusing its enforcement efforts on encouraging voluntary compliance. According to program staff, there are currently about 7,000 active USTs in use which are located at approximately 2,700 facilities.

One of the primary assumptions used in the formulation of the program's enforcement strategy is that adequate compliance can be achieved by providing information and technical assistance to owners/operators in order to prevent violations from occurring.

During the past four years, the program has invested a major portion of its program resources to fund activities designed to educate the regulated community about compliance issues. An intensive effort has been made to provide technical assistance to the regulated community. These activities have been in the form of statewide "town meetings," speaking engagements at trade conferences, training workshops, the provision of informational mailings and brochures, and news releases.

Exit interviews are conducted at the conclusion of each field inspection. These sessions provide an opportunity for tank owners/operators to ask questions and seek technical and compliance assistance.

6. Compliance Tools Available and Used. The program's formal inspection and enforcement procedures are documented in the *Underground Storage Tank Enforcement Procedures Guidance Manual*, in place since 1991. The program has a number of "enforcement tools" which are used to encourage and obtain compliance. The program's enforcement goal is to achieve the highest level of compliance possible with the smallest expenditure of limited formal enforcement resources. To achieve this goal, the program utilizes an escalating enforcement strategy. The "enforcement tools" which are used range from informal to formal enforcement activities.

Because of the size and nature of the regulated community, the program is focusing its primary enforcement efforts on encouraging voluntary compliance through the following enforcement activities:

Informal enforcement activities

- Inspection exit conferences, checklists
- Written inspection reports - findings and recommendations
- Warning letters
- Informal notices of violations
- Compliance plans and schedules
- Follow-up meetings, phone calls
- Follow-up inspections

The following stricter, more resource-intensive formal enforcement activities are taken when efforts to gain voluntary compliance through informal enforcement efforts have been unsuccessful:

Formal enforcement activities

Administrative remedies

- Formal Notices of Violation;
- Administrative Orders;
- License revocation

Judicial remedies

- Civil actions (court ordered corrections, penalties)
- Injunctions
- Criminal sanctions (fines/penalties, imprisonment)

The program has statutory authority (§75-10-423, MCA) to utilize administrative penalties. The agency has prepared, but not yet adopted, administrative rules which will implement an expedited administrative penalty program.

The menu of tools used by the program is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with the Underground Storage Tank Release Prevention Program rules and regulations are:

Agency-Generated.

- 1) Tank-owner eligibility for financial responsibility and corrective action cost reimbursement if found to be in compliance with tank management and release prevention requirements.
- 2) Loss or threat of loss of tank installer/remover licensure.
- 3) Federally imposed deadlines for UST replacement and upgrading.
- 4) Inability to obtain fuels/chemical delivery unless tank is notified to and tagged by the program.

Industry-Generated.

- 1) Property valued as an asset or liability depending on status of facility upgrade.
- 2) Peer pressure.
- 3) Real estate transfers/fiduciary concerns.

Other.

- 1) Threat of financial ruin and 3rd party suits from undetected releases causing catastrophic impacts to ground water or adjoining properties.
- 2) Danger of fire or explosion from vapor migration.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- UNDERGROUND STORAGE TANK RELEASE PREVENTION

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Education/Information/T.A.: Program Info on NRIS (Natural Resource Information System)</p> <p>On-site Technical Assistance -Local Government Training</p> <p>-State Efforts</p> <p>Technical Seminars</p> <p>Brochures, 1-800 toll free number, inspection exit conferences, newsletters, annual mailings</p>	<p>The USTRP does not have its information on the NRIS database; however the UST corrective action program, which is closely related, is compiling soil and groundwater information from throughout the state as a result of its subsurface investigations. The NRIS system at the State Library is 1) a computerized inventory of natural resource data, and 2) a network for accessing existing public computerized data banks throughout government. The USTRP Program does not have the capability to present tank data so it can be used by NRIS, but is seeking funding for ground positioning system (GPS) equipment to gather the needed data. The USTRP program has use of the UST corrective action program soil and groundwater information when it is permitting UST installations, removals and upgrades (leak detection monitoring, cathodic protection retrofits, etc). The USTRP program does have its own database describing the locations of 23,463 USTs in Montana, many of which have been closed or removed as a result of this program.</p> <p>The USTRP program has contracts with 32 local government agencies (local health, fire departments, and rural fire districts) to assist with on site field inspections of UST facilities on an as-needed basis. Local governments are reimbursed for their efforts and their staff is trained by the USTRP program.</p> <p>The USTRP program has 7 FTEs assigned to compliance, regulatory and permitting efforts. Inspections are ad hoc, complaint, or tank activity driven.</p> <p>Town meetings, trade conferences, and training workshops are offered or attended regularly.</p> <p>Routine and annual mailings to UST owners and licensed installers provide compliance information, upcoming deadlines, and provide agency toll free phone numbers to the public. Inspection exit interviews with UST owners provide rules compliance information.</p>	<p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>staff</p>	<p>NA</p> <p>32</p> <p>356</p> <p>2</p> <p>NA</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- UNDERGROUND STORAGE TANK RELEASE PREVENTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Comprehensive Planning/Withdrawals: - "Unsuitable" Lands	Not authorized	NA	NA
Permits\Certification\Bonds - Tank Installers\Removers License	Good for 3 years, applicants must pass examination and have proof of experience to obtain license. License must be renewed annually and reissued every third year. Licensees must demonstrate continuing competency through continuing education or via examination prior to having their license reissued. License is required to install\remove USTs or to repair or upgrade an UST system. UST owners or operators may install\remove\repair their own systems without being licensed, provided they obtain a permit (below) and have the installation inspected.	UST Pro- gram tests	280
- UST installation or removal permit	Required to perform work on an UST: removal, installation, or upgrading.	UST staff	999
- Tank Inspectors license	Required for local governments to contract with state and receive 80% of UST installation\removal permit fees to cover costs of on-site inspections.	UST Pro- gram tests	62
- Tank Registration permit	\$20 maximum annually for USTs< 1100 gallons capacity; \$50 max. annually for larger tanks. Tags and certificates are issued for notified\paid tanks. Tanks without tags cannot be filled with product.	staff	7000 active USTs
- Certification\Bonds	Not authorized	NA	NA

STATE COMPLIANCE/ENFORCEMENT TOOLS -- UNDERGROUND STORAGE TANK RELEASE PREVENTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections: -Informal -Formal monitoring reports -Compliance inspections -Self Certification -Sampling Inspections	Performed continuously ad hoc as compliance assistance\information effort	staff	356
	Not required. USTRP program leak detection rules are self implementing and are the responsibility of the owner to implement and keep records of the results.	staff	
	Ad hoc as time allows, complaint driven and activity related (installations, removals, etc)	staff	
	Currently under development by the agency to allow the regulated community to certify compliance and thereby prioritize agency inspection efforts.		2
	Authorizes agency to enter and inspect at reasonable hours upon presentation of credentials to sample materials, wastes, soil, water, or copy records etc, if agency believes there is non-compliance or in order to enforce law, rules or order.	staff	

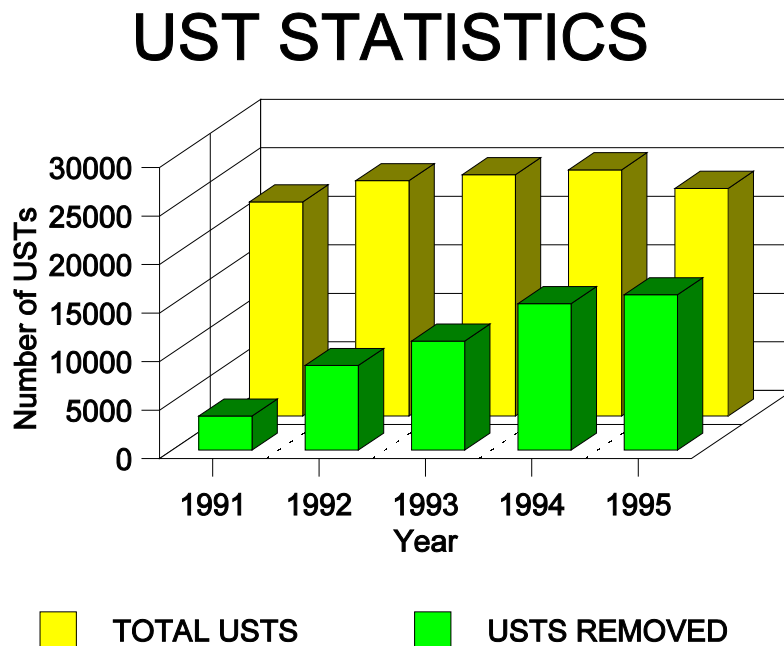
STATE COMPLIANCE/ENFORCEMENT TOOLS -- UNDERGROUND STORAGE TANK RELEASE PREVENTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders:			
Notice of Violation -Warning Letter	Issued for first time offenders or when minor violation is noted and compliance is anticipated\expected.	staff	47
-Informal within 30 days of discovery	Issued for violations requiring corrective action by date certain, with warnings of follow-up enforcement responses and requesting submission of certificate of compliance. Copies of NOV are submitted to the Petroleum Tank Release Compensation Board.	staff	39
-Formal within 90 days of discovery	Issued with formal citations and requests for compliance plans\schedules for potentially serious violations which may not be promptly corrected.	Director; UST legal counsel	0
Administrative Orders	May be issued for alleged violations of law rule or permit. Becomes effective in 30 days unless recipient requests a hearing before the Board of Environmental Review.	Director	0
Cleanup Orders	Issued upon evidence of spill, discharge, etc. resulting in unlawful disposal.	Director	NA

STATE COMPLIANCE/ENFORCEMENT TOOLS -- UNDERGROUND STORAGE TANK RELEASE PREVENTION			
Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Penalties/Sanctions:			
Notice of Violation/Proposed Penalty (NOVPP)	Authorized under MCA 75-10-423 for UST violations only; does not apply to UST installer/remover law. Maximum penalty \$500/violation.	not yet imple- mented	-
Opportunity for Conference/ Hearing	To contest alleged violation or to request mitigation of penalty. Hearing conducted as a contested case under the provisions of the Mont. Administrative Procedures Act (MAPA).		0
NOVPP Modification - Penalty Waiver	Established through matrix adopted by pending rule allowing for gravity of violation, harm, and corrective action taken.	see above	-
License Revocation	UST Installers and Removers licenses can be denied, modified, revoked, conditioned or suspended for fraud, non-payment of fees, failing test examination, having been licensed and revoked in other states, or violations of law, rule, permit, or order relative to UST installation of closure.	Director	2
-Hearing	Hearings on license actions may be requested before the Board of Env. Review in accordance with MAPA provisions.	Director	0
Civil Judicial Action:			
	For violations of UST law, rules, orders of agency or the Board of Environmental Review. Maximum \$10,000/violation/day.	Director	6
Injunctions	To require compliance with law, rule, order, or permit; to immediately restrain unauthorized activity endangering public health or environment; to avoid imminent hazard endangering public health or environment.	Director	0
Criminal Judicial Action:			
	Criminal penalties apply <u>only</u> to the UST installers/removers law (Sec 75-11-201 et. seq.). They apply to willful violations, knowingly making false statements, installing or removing USTs without permits or without a license. Maximum \$10,000 and/or 6 months for the 1st offense. Maximum \$20,000 and/or 1 year for subsequent violations.	Director	0

History of Compliance. Trends in compliance with USTRP rules and requirements are illustrated below. The USTRP Program implemented minimal federal EPA requirements for tank notification and interim new tank standards in 1986. Federal and state program operational rules were developed in 1988 and 1989 respectively. The program's early compliance efforts focused on educational and compliance assistance efforts. According to staff, the program has only recently instituted a more active enforcement effort.

The primary goal of both the federal and state UST Programs is to prevent releases from underground storage tanks and piping. One of the major causes of releases is that unprotected steel tanks and piping corrode and release product through corrosion holes. Most of the UST systems installed prior to 1986 were constructed of bare steel tanks and piping. To address this problem, federal and state tank regulations require USTs installed before December 1988 to have corrosion protection by December 1998. Owners and operators have the options of either adding corrosion protection to existing bare steel tanks and piping or removing the substandard tanks and piping before December 1998.

The following graph shows Montana's compliance effort in meeting the 1998 deadline that requires operating USTs to be protected from corrosion. To date, owners and operators of about 15,000 substandard USTs have chosen to permanently close their tank systems rather than upgrade them with corrosion protection and overfill/spill equipment. The early closure of these tank systems has prevented many leaks that could have occurred between now and December 1998.



Note: As of April 27, 1995, Montana's total UST population decreased from 25,954 to 23,463 underground storage tank systems. SB 386 (1995 Legislative Session) removed 2,491 small farm and residential tank systems from regulation as underground storage tank systems.

Approximately 2,000+ tanks of the state's active tank systems have either been upgraded with corrosion protection and overfill/spill containment equipment or replaced with either new fiberglass, composite, or cathodically-protected steel tanks and piping.

9. "Violations." The UST Release Prevention Program has no written policy establishing a hierarchy of violations. As standard operating procedure, the program has determined that the following violations are most serious because these deficiencies are most often responsible for releases occurring and they exacerbate the severity of the release.

- Failure to promptly report a release.
- Failure to install a properly designed underground storage tank system.
- Failure to properly and routinely conduct release detection.
- Failure to notify the existence of an underground storage tank system.
- Failure to equip pressurized product piping with appropriate release detection equipment.

A violation is deemed "significant" if the deficiencies are determined to be serious enough to require further follow up action, such as a re-inspection, a warning letter or other informal enforcement action. Such violations generally involve release detection, notification, improper installation and/or closure deficiencies because the failure to be in compliance with these requirements increase the potential that a release will not be prevented or will not be promptly detected.

During FY 1995, the program conducted 356 compliance inspections, 133 tank installation/closure inspections, and initiated 86 informal enforcement actions (warning letters and Notices of Violation) and 8 formal enforcement actions (administrative orders and civil complaints). There were more than 400 violations noted, over half for failure to comply with product delivery line leak detection requirements.

During 1995 the Underground Storage Tank Program took formal enforcement actions for violations shown below:

<u>1995 USTRP Violations Resulting in Formal Enforcement, by Type and Status</u>						
<u>Month Issued</u>	<u>Type of Action</u>	<u>Type of Operator</u>	<u>Description of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation</u>
March	Civil	Tank Owner	Leak detect. deficiencies, waived temp. closure violation.		active	yes
May	Civil	Tank Owner	Failure to do site assessment.		active	yes
May	Civil	Tank Owner	Failure to do site assessment.	\$500	closed	yes
May	Civil	Tank Owner	Leak detect. violation.	\$2,000	active	yes
June	Admin. Order	Licensed Installer	Failure to conduct closure in accordance with dept rules.		closed	yes
July	Civil	Tank Owner	Failure to promptly report a release, leak detect. deficiencies.		dismissed	yes
July	Civil	Tank Tester	Failure to promptly report a release.		dismissed	yes
August	Admin. Order	Licensed Installer	Failure to conduct installation in accordance with dept rules.		active	yes

source: Gessaman, 1996.

Discovery of Violations. Most program violations are discovered and documented during field inspections and complaint investigations. Checklists and inspection and investigation reports are used to document violations. The UST installation and closure permitting process provides another opportunity for deficiencies to be identified and remedied. Permitting program staff work with owners and operators when deficiencies are found in a proposed installation project. The program also maintains a computer database through which violations can be tracked and corrections can be

monitored. Program staff and management can utilize information in the database to review individual violations or to generate statistics about violations.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
UST owners	400	0	NA	400	0 ¹
UST installers/removers	3	0	NA	2	1 ²

¹ During FY 95, the program received 2 complaints concerning tank operations, DEQ's investigations of the complaints found no violations of the underground storage tank regulations.

² During FY 95, the program received 3 complaints concerning tank installer activities.

The following chart provides a summary of violations noted by the program during 1994 and 1995. The compliance/enforcement response to these violations was typically begun with informal enforcement actions, (e.g., warning letters, notices of violation) escalating to the use of formal enforcement actions, administrative orders or civil complaint, as the case progressed.

Summary of Violations Observed by Category		
Violation category	Number of Violations by Fiscal Year	
	1994	1995
Failure to notify a tank's existence	15	12
Failure to properly close an out-of use tank	14	67
Failure to provide automatic line leak detection	94	120
Failure to conduct line tightness testing	67	108
Failure to do monthly inventory control	32	47
Failure to conduct annual tank tightness tests (if required)	11	46

source: Gessaman, 1996.

10. Considerations in Calculating Penalties. The program's enforcement policy contains a penalty calculation matrix which factors background, environmental, economic benefit, gravity-based, and violator-specific components into the determination of a target penalty. The program has a written *Enforcement Procedures Guidance Manual* developed as part of its EPA grant obligations which provides guidance for penalty calculations. The program's enforcement guidance provides for consideration of the frequency of violations in selecting an appropriate enforcement response. Frequent or continuing violations warrant an increased level of enforcement response. The program uses a formalized UST Enforcement Priority Ranking Schedule and form utilizing a point system to rank facilities for enforcement action. The ranking form is used to objectively evaluate violators for referral for judicial enforcement. The type of enforcement response selected depends on the seriousness of the violation, (i.e., actual or possible harm, importance to the regulatory program, availability of data about the violation, etc.) other circumstances of the violation (i.e., culpability) and information about the owner, (i.e., economic benefit of noncompliance, the facility's compliance history, the owner's ability to pay and the size of the business).

11. Resolution of Noncompliances. As previously mentioned, the formal enforcement component of the program has only been implemented recently, following years of program development and significant efforts at compliance education for a rather large and previously unregulated community. The recently authorized administrative civil penalty provision rules have not yet been adopted by the agency. Formal enforcement actions are usually needed to deal with noncompliant violators.

The department's director is ultimately responsible for the program's enforcement activity. Current department policy requires that the director authorize each formal enforcement action before it is referred to the Legal Unit. Standard operating policy requires that initial compliance efforts be taken through informal enforcement activities. In most instances, formal enforcement efforts are pursued only after informal enforcement efforts have proven unsuccessful in obtaining compliance.

When formal enforcement activities become necessary, such action is initiated by program specialists (inspectors). The process is initiated by completing and forwarding a Request for Enforcement Action/Activity to the program manager. If the program manager concurs with the specialist's recommendation, the request is forwarded through the division administrator to the director's office. If the director signs the request, it is referred to the program attorney for implementation. The program attorney and the enforcement coordinator are responsible for seeing that the action is brought to conclusion. The program has the services of 0.5 FTE attorney.

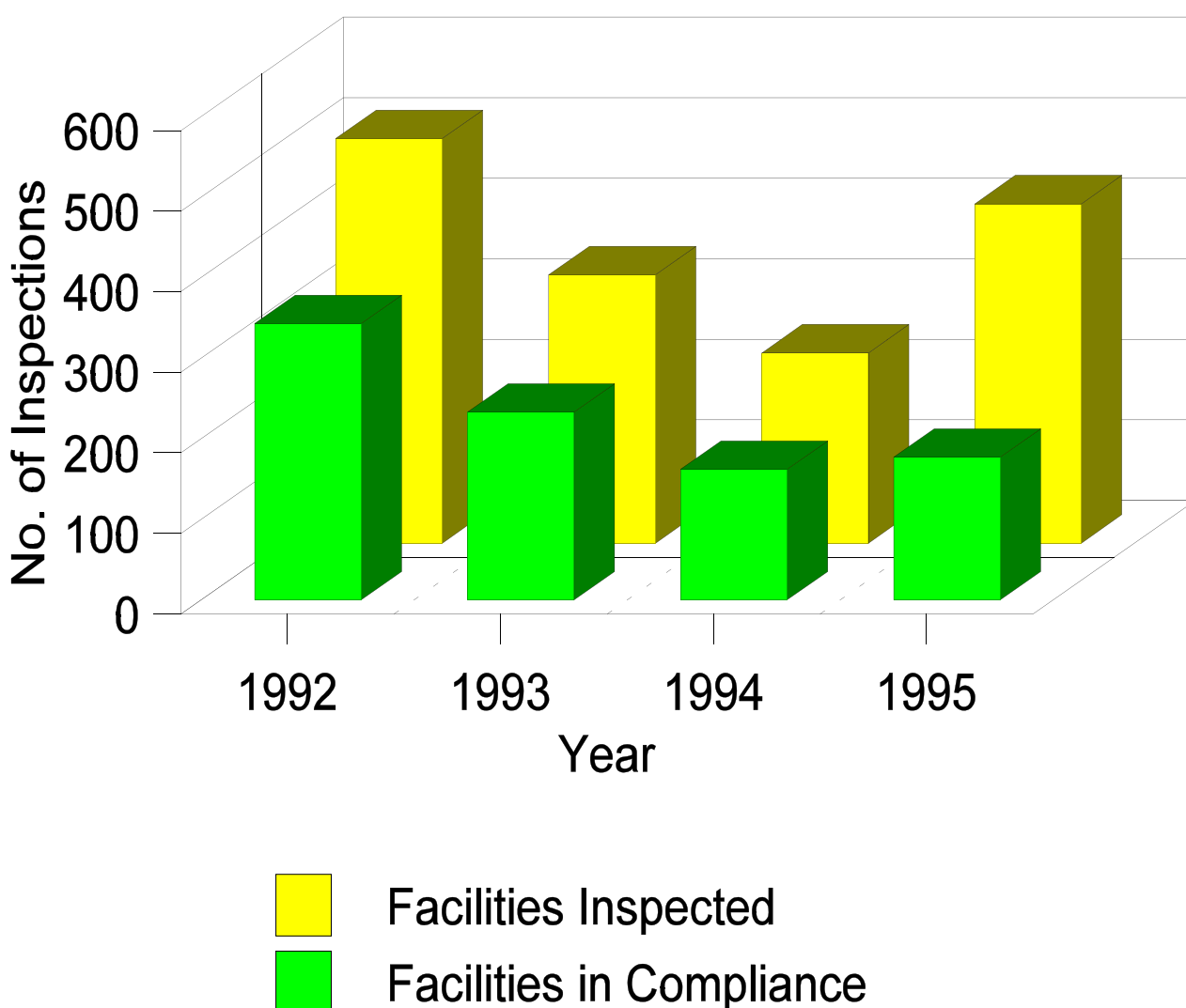
Shown below is a chart detailing the various compliance/enforcement actions taken by the program during FY 1993, FY 1994 and FY 1995.

Summary of Formal Enforcement Actions			
Activities by Fiscal Year	1993	1994	1995
Compliance Inspections	440	319	356
Informal Enforcement Activities (informal NOVs only)	43	37	39
Formal Enforcement Activities (Administrative Orders and Civil Complaints)	1	1	8
Installer Licenses Conditioned	0	1	0
Installer Licenses Revoked	1	1	0

The graph below shows the rate of "significant compliance" for UST facilities as determined by on-site inspections completed during calendar years 1992, 1993, 1994, and 1995. The data was gathered from program statistics reports prepared to satisfy federal grant reporting requirements.

(NOTE: The data used to generate the graph is not the same as that shown in the table above. First, the graph reports data for **calendar years**; the table reports data for **state fiscal years**. Second, the graph does not include statistics about the number of re-inspections completed or the number of inspections that were conducted on tanks and piping not regulated by federal law.)

UST COMPLIANCE HISTORY



12. Current Compliance Priorities. Agency staff have identified the following priorities for the Underground Storage Tank Release Prevention compliance and enforcement program.

- Inspect all facilities with underground pressurized piping, especially underground piping attached to aboveground tanks.
- Inspect all new UST installations.
- Develop and implement a "self-certification" program.
- Provide more field presence and greater visibility of enforcement activities.
- Solicit more involvement from the regulated community, public, and other stakeholders in the development, review and implementation of the program's regulatory effort.
- Make more effective use of the product delivery network.
- Encourage the development of a financial assistance program which will provide funding for upgrades of existing facilities and the cleanup of abandoned tank sites.

Agency staff have identified the following short term priority needs for the USTRP Program:

- Adopt rules to implement administrative penalty provisions.
- Develop a draft program enforcement strategy matrix.
- Create a "tank advisory group" composed of tank owners, stakeholders and the public.
- Study the development of a tank operating permit system.

13. Compliance Relationships with Other Agencies.

Oversight. Montana has received federal program approval from the Environmental Protection Agency. This means that the Department of Environmental Quality has primacy for the regulation of the underground storage of regulated substances in the State of Montana, except within the boundaries of the state's seven Indian reservations. Although program approval has been granted, EPA will maintain an oversight role to insure that Montana's program operates in a manner which is at least equivalent to federal standards and requirements. The receipt of federal UST Program Assistance Grant monies also creates quarterly and annual reporting requirements.

Unlike other federal Resource Conservation and Recovery Act (RCRA) Programs, EPA developed the underground storage tank program to be a "franchise" program. In developing the "franchise" concept, EPA envisioned that its role would be to assist in the development and support of viable state programs which would totally supplant the federal UST program.

EPA estimates that the Office of Underground Storage Tanks will cease operation in 2001. Regional EPA offices will pick up some the national office's duties and responsibilities at that time and continue to provide limited support to state programs. Federal grant oversight requirements require that the EPA state project office must conduct mid-year and year-end reviews of the program's activities. The state program has negotiated a Cooperative Enforcement Agreement with the U.S. EPA. Compliance/enforcement activities are reviewed in relation to the annual workplan which is developed as part of the State/EPA Agreement. Records of such activities must be provided for EPA review.

Partnerships. The Underground Storage Tank Release Prevention Program has entered into a Cooperative Agreement with the Assiniboine and Sioux Tribes to jointly regulate underground storage tanks on the Fort Peck Indian Reservation.

In an attempt to resolve overlapping regulatory issues involving underground piping connected to aboveground tanks, the UST Program has recently contacted the state fire marshal about the formulation of a Memorandum of Understanding (MOU) to delineate enforcement roles and responsibilities.

Delegated Authority. The program has delegated inspection authority to local government units where possible. The State/EPA cooperative agreement provides for this, as does state law. The program utilizes the services of personnel employed by willing local health departments, fire departments and rural fire districts. The program currently has contracts with 32 local governmental agencies. These agencies conduct compliance inspections, disseminate information, and complete tank closure inspections. Individuals who carry out these duties are licensed as inspectors by the state program. The UST program is authorized to reimburse local government units for their work on behalf of the program. Reimbursement funds are generated from UST permit fees.

During FY 1995, local government inspectors conducted 276 out of the total 356 compliance inspections and 73 of the installation/closure inspections.

WATER QUALITY DIVISION

The Water Quality Division is responsible for the protection of public health and the environmental quality of Montana's water resources. The program administers the Montana Water Quality Act, Montana laws regarding public water supply, the Sanitation in Subdivision Act, the Water/Wastewater Operator Certification law, and numerous rules promulgated to implement these laws. The division has seven active programs responsible for the implementation of its statutes and rules, 6 of which are covered in this report. The seventh section, "Enforcement," is not addressed separately, but, instead, enforcement activities are reflected as a part of each section's responsibilities.

Funding Sources, FY 96

Program/Activity	General Fund	State Special/ Fees	Federal	Total Funds	FTE
Water Quality Management	None	\$298,100	\$1,118,800	\$1,416,900	11.2
Pollution Control	None	85,400	489,600	575,000	8.3
Water Permits	None	483,800	30,000	513,800	9.6
State Revolving Fund	None	63,100	668,400	731,500	10.3
Ground Water	None	240,020	169,500	409,500	7.6
Drinking Water/ Subdivisions	None	1,363,300	793,300	2,156,600	29.3
Misc/Cost-Share	None	141,600	0	141,600	NA
TOTAL (FY 96)	0	\$2,675,300	\$3,269,600	\$5,945,000¹	76.3
TOTAL (FY 90)					

Notes:

1 Does not include \$1,541,200 of ear-marked dollars to be passed through to conservation districts for non-point-source-related efforts.

source: LFA, 1995, 1989.

Legislative History

Events important to the compliance/enforcement elements of the Water Quality Program are summarized below.

- 1907 First water quality law passed in response to typhoid outbreaks in the Milk River; law required treatment of all sewage discharged into water used for public water supply or ice-making.
- 1955 First comprehensive state water pollution control law was passed to protect all beneficial uses.
- 1956 Congress passes the Federal Water Pollution Control Act.
- 1968 Wastewater Discharge Program initiated; permit requirements were simple and designed to protect aesthetics and water quality.
- 1972 Congress passes major amendments to the Federal Water Pollution Control Act, creating the Federal Clean Water Act. The law included provisions for a National Pollutant Discharge Elimination System NPDES, to control point source discharges.
- 1974 Federal government first regulates drinking water through passage of the Safe Drinking Water Act; State of Montana receives delegation of NPDES program, through EPA, and calls it the Montana Pollutant Discharge Elimination System (MPDES) program.

- 1978 Montana assumes primacy for federal Safe Drinking Water Act
- 1986 Federal government requires EPA to promulgate a series of new regulations for Montana water suppliers; since then, EPA has promulgated 7 or 8 new rule packages related to public water suppliers, each almost a separate program unto itself. With primacy, the state has the responsibility to implement those rules.
- 1987 Water Quality Division establishes internal enforcement program. This was the first specific enforcement program in a state administrative agency.
- 1992 Federal regulations promulgated for nonpoint source discharges.
- 1995 Enforcement and Compliance Manual adopted by DEQ; Trailer Court and Campgrounds Law (related to drinking water) authority moved to Department of Public Health and Human Services

The mission of the Water Quality Division is to protect, sustain, and improve a clean and healthful environment to benefit present and future generations. The division's first priority is keeping the regulated community in compliance with all the applicable statutes and rules.

A written enforcement manual, adopted in August 1995, ensures systematic and predictable enforcement decisions. Field investigations are crucial for an adequate program and quite often, informal discussion with a member of the regulated community is sufficient to ensure compliance. If informal approaches do not work, formal enforcement actions are taken. Formal enforcement actions, detailed in the Manual, range from written notices of noncompliance to judicially imposed penalties or criminal sanctions. The division may also refer a violation to the federal Environmental Protection Agency. Over the past 20 years, \$650,000 has been assessed and collected in penalties for water quality violations and \$100,000 in agency expenses has been recovered. When required, the penalties sought must equal the cost savings resulting from noncompliance. This removes any economic advantage for noncompliance. The division defines success in terms of decreased violations and improved compliance.

Immediate goals for the division include developing and implementing an improved violation tracking system, ensuring that the statutes and rules are written clearly and concisely so to be easily understood by the regulated community, and improving the division's education and technical assistance capabilities.

Public Water Supply Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Public Water Supply Program. Due to the nature of the program's operations, this summary includes information on the following specific programs: Public Water Supply Act; Sanitation in Subdivisions; and Water and Wastewater Operator Certification.

Where appropriate, information on specific programs is highlighted under general headings.

Primary constitutional and statutory authorities (see Appendix B):

- **Article II, section 3** - "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . ."
- **75-5-101, MCA. Water Quality Act** policy statement. "It is the public policy of this state to conserve water by protecting , maintaining, and improving the quality and potability of water."
- **75-6-101, MCA. Public Water Supply Act** policy statement. Similar to above.
- **37-42-101, MCA. Water and Wastewater Operator Certification** purpose section. "The health and welfare of Montana citizens and Montana's state water are jeopardized by persons not properly qualified to operate water supply systems and wastewater treatment plants."
- **76-4-101, MCA. Sanitation in Subdivisions** policy statement. "It is public policy to extend laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems."

Supplemental and/or related state authorities:

- None

Related federal authorities:

- **Clean Water Act**
- **Safe Drinking Water Act**

Specific enforcement authority:

General:

- 75-5-601, MCA et seq

PWSA:

- 75-6-109 through 114, MCA

Subdivisions:

- 76-4-1241 through 76-4-1251, MCA

Water Treatment Plant Operators:

- 37-42-321, 37-42-322, MCA
- ARM 16.20.801-805

2. Program Goals. Based on the above-referenced guidance, the Public Water Supply Program has identified the following program goals:

Public Water Supply Program:

1. Implement state and federal drinking water regulations.
2. Provide technical assistance and training to public water supply system operators.
3. Review plans for improvements to systems.
4. Provide assistance to the general public.

Subdivision Program:

1. Ensure that the water supply, wastewater treatment, storm water drainage and solid waste disposal facilities for proposed subdivisions meet minimum standards.
2. Protect Montana's water resources.

Water and Wastewater Operator Certification Program:

1. Administer the testing and continuing education requirements for individuals in responsible charge of public water and wastewater systems.

3. Program Activities.

Public Water Supply Program: The Public Water Supply Program regulates 1,930 water supply systems that serve 15 or more service connections or 25 or more people. About one half of this total is systems serving transient populations, i.e., schools, campgrounds, restaurants, etc. The other one-half is systems serving residential populations. These systems serve over 600,000 Montana citizens.

The program participates in a very active statewide operator training program that also involves other technical assistance providers. The program emphasizes operator training, technical assistance, and proper water treatment and monitoring. These activities promote public health protection through preventive measures.

The program also reviews plans for proposed improvements or modifications to public water and wastewater systems to ensure conformance with minimum state standards.

Subdivisions: The Subdivision Program reviews proposed subdivisions to ensure the adequacy of the water supply, wastewater treatment, storm water drainage and solid waste disposal. Subdivision applications have increased significantly since 1990. There were 1,508 subdivision applications that created 6,922 lots in 1995.

Water and Wastewater Operator Certification Program: Montana operators are responsible for ensuring safe and palatable drinking water for more than 600,000 Montanans daily and for ensuring that wastewater from our communities and industries does not pollute state waters. Program staff administer certification exams and provide training and continuing education regarding operations and safety for these high risk professions.

Program Activities	FY 96 Budget¹	FY 96 FTEs²	Avg. Years Staff Retntn.	1995 Ongoing Projects/Sites	Avg. Acres/ Site	Avg. # of new proj./yr³
Public Water Supply	1.581	20.25	4	1930+	N/A	350
Subdivisions	.555	6.3	2	+/-100	N/A	1500+
Op. Certification	.061	1.25	3	1400+	N/A	100

Notes:

1. Figures in millions of dollars.

2. Includes administrative, attorney, management staff positions.

3. Refers approximately to last 5 years.

source: Melstad, 1996.

Fees and Charges.

Public Water Supply Program:

<u>Type</u>	<u>Amount</u>	Typical Annual <u>Total</u>	Allowed <u>Uses</u>
Service Connection Fees:		\$520,000	PWS Program
Community System ¹ :	\$2	(Total)	Administration
Nontransient system:	100		
Other:	50		
Public System Improvement			
Review Fees:	Varied ²	45,000	
Additional MEPA Fees:	MEPA Fees		
Noncompliance Penalties:	<10,000/day		General fund
TOTAL:		\$565,000	

Notes:

1. Per service connection.

2. Varies greatly depending on the nature of the system and of the improvement. Typical fees range from \$50 to 1200.

Subdivisions:

<u>Type</u>	<u>Amount</u>	Typical Annual <u>Total</u>	Allowed <u>Uses</u>
Subdivision Review Fees:	Varies ¹	\$558,500	Subd. Program
Permit Renewal Fees:	Not Authorized		Administration
Additional MEPA Fees:	MEPA Fees		
Noncompliance Penalties:	<1,000/day		General Fund
TOTAL:		\$558,500	

Notes:

1. Varies from \$30 for review of a lot with an extension of existing municipal water and sewer systems to \$120/lot using an individual septic system and water supply.

Water and Wastewater Operator Certification Program:

<u>Type</u>	<u>Amount</u>	Typical Annual <u>Total</u>	Allowed <u>Uses</u>
Certificate Application Fee:	\$30	3,000	Op. Cert. Program
Annual Renewal Fee:	30	60,000	Administration
Additional MEPA Fees:	MEPA Fees		
Noncompliance Penalties:	Not Authorized		
TOTAL:		\$63,000	

4. Regulated Communities.

Public Water Supply Program: Any water supply that serves 15 or more service connections or 25 or more people is defined by law as a public water supply and is regulated by the program. Approximately 1,930 regulated systems exist in Montana.

Subdivisions: State law requires program review of water, wastewater, stormwater, and solid waste facilities on land divisions where one or more parcels less than 20 acres in size is created.

Water and Wastewater Operator Certification: State law requires certification of individuals in charge of public water supply, water distribution and water treatment facilities

5. Philosophical Approach to Compliance. The philosophy of the Drinking Water Program is that preventing contamination is easier than correcting it. Therefore, the program stresses adequate training and education for the regulated community. When a violation occurs, the program will first attempt to achieve compliance through informal enforcement actions. These action may include informal discussions with a violator, on-site technical assistance, letters, etc. If these actions fail, program staff will use the DEQ's enforcement response guide to select the appropriate formal enforcement action.

6. Compliance Tools Available and Used. The menu of tools used by the programs to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance.

Public Water Supply Program: The greatest incentive for compliance with DEQ's rules and regulations is the desire to provide good water to their clients. Also, compliance eliminates the possibility of penalties. Finally, compliance may result in reduced monitoring requirements, depending on the nature of each PWS.

Subdivisions: Compliance eliminates the difficulty that could occur with lots sales or with home financing on lots that do not comply. (Reimposition of sanitary restrictions would prohibit lot sales; some lending institutions will not loan money for home construction when noncompliance is an issue.)

Water Treatment Plant Operators: Certification provides an individual with a measure of professional accomplishment and job security. Certification remains with an individual; it can be utilized by that individual at any similar PWS in the state. A high level of professionalism exists among certified operators in Montana.

8. History of Compliance.

Public Water Supply Program: There are many episodes of technical noncompliance due to the new federal rules. Most of these noncompliances are not significant violations.

Subdivisions: The greatly increased demand for land acquisition in Montana over the past 5 years and the subsequent level of subdivision activity has resulted in an increased number of violations. The most common violation is construction without DEQ approval.

Water Treatment Plant Operators: The program has experienced a high level of compliance over the years.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- PUBLIC WATER SUPPLY PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: * Annual Training * Technical Assistance * General Information	Annual training events are scheduled through coordination with the Montana Environmental Training Center. Training is scheduled in advance to provide appropriate a variety of training opportunities to water and wastewater system operators in all parts of the state.	Program staff	35
	Technical assistance is provided on a routine as-requested basis.		25
	General information is provided to water suppliers, consultants, sanitarians, other private and governmental organizations and to the general public on a daily basis.		Routine
Comp. Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds:	Plan approval for improvements to public water and wastewater systems is required prior to construction. Because of increased regulatory responsibilities, approximately two-thirds of projects are reviewed by a contracted consultant.	Program Staff Engineers Consultants	325
Monitoring/Inspections: * Monitoring	1930 public water supplies are self-monitored regularly for as many as 100+ contaminants, depending upon system type and size. Monitoring for treatment effectiveness and for contaminants occurs at regular frequencies. Monitoring frequencies vary from daily to once every 3 years or more, depending upon the treatment process or contaminant.	Program Staff or contractors	Many 1000's
	State, contracted county sanitarians and PWS staff perform inspections. Inspections occur annually, or every three years, depending upon system type.		600- Approx

STATE COMPLIANCE/ENFORCEMENT TOOLS -- PUBLIC WATER SUPPLY PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Administrative Notices/Orders:	Authority is granted in the PWS Law for administrative orders to address violations of the act. Used in accordance with provisions of the DEQ Compliance/Enforcement Manual. Normally used for less serious and/or less contentious violations to implement conformance with the PWS law. (See ARM 16.20.801-805)	Division Administrator	2 ¹
Admin. Penalties/Sanctions:	Authority in PWS Law for administrative penalties of up to \$500/day. Penalties used when culpability, history or seriousness of violations or other factors warrant such action. ARM 16.20.801-805 addresses administrative order procedures and minimum penalties for common violations.	Division Administrator	1
Civil Judicial Action:	Judicial action and civil penalties sought typically for more serious and/or contentious violations of the PWS Law, or when administrative remedies are not successful. Authority for judicial action and civil penalties up to \$10,000/day in PWS law.	DEQ Director	0.0000
Criminal Judicial Action:	Criminal penalties, misdemeanor charges, are sought when violations result from gross negligence, intentional noncompliance or failure to comply with court or department orders.	DEQ Director	0.0000

Notes:

¹ Enforcement activity generally lower in 1995 because of state agency reorganization and development of revised WQD enforcement procedures.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SUBDIVISION REVIEW PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: * Training and Technical Assistance * General Information	<p>Training and technical assistance are provided when time allows staff to respond to requests. Ability to respond is limited because of the number of subdivision applications.</p> <p>Information is provided to applicants, consultants, other governmental and private agencies routinely on a daily basis.</p>	Program Staff	15 Routine
Comp. Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds:	DEQ review and approval of water, wastewater and stormwater improvements, i.e., the lifting of sanitary restrictions. Review and approval is required prior to construction for new lots less than 20 acres in size. Some exemptions apply. Conditions are included in each approval document. Filing of the document in the county clerk and recorders office is required before the parcel can legally be created. Approximately 50% of all reviews are now performed by contracted consultants.	Program Staff	1500+
Monitoring/Inspections: * Monitoring * Inspections	<p>Monitoring is required of wastewater systems that are installed in areas where impacts to state waters may occur, or where experimental treatment systems are proposed. Owners or a DEQ approved agent are normally required to perform monitoring, but department staff may also monitor as time allows.</p> <p>Inspections are performed as time allows when large subdivisions or subdivisions in environmentally sensitive areas are proposed.</p>	Program Staff	25 10
Administrative Notices/Orders: Not Authorized			

STATE COMPLIANCE/ENFORCEMENT TOOLS -- SUBDIVISION REVIEW PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: * Penalties Not Authorized * Sanctions	<p>No authority for administrative penalties in Sanitation in Subdivisions law. Authority for administrative penalties in the Public Water Supply Law may be used where public water systems are utilized within subdivisions.</p> <p>The reimposition of sanitary restrictions is an administrative procedure that is used when conditions of approval have not been observed, and when the owner/developer still owns lots within the development. Reimposition occurs only after the owner/developer has had an opportunity for an administrative hearing before the DEQ. Reimposition is accomplished through the county clerk and recorder's office, and prevents further transfer of lot ownership until noncompliance is corrected.</p>	<p>Division Administrator</p> <p>Division Administrator</p>	<p>unk</p> <p>0</p>
Civil Judicial Action: * Court Order and Penalties * Injunctive Relief	<p>May be used when administrative relief is exhausted and violations are unresolved. Penalties up to \$1000/day.</p> <p>Injunctive relief is typically sought when construction of infrastructure facilities has begun prior to DEQ approval.</p>	<p>DEQ Director</p>	<p>0¹</p> <p>0</p>
Criminal Judicial Action:	<p>Misdemeanor charges may be filed for willful violations. Fines up to \$1000/day.</p>	<p>DEQ Director</p>	<p>0.0000</p>

Notes:

¹ Two requests for formal enforcement action have been approved by the WQD enforcement team, but the type of action has not yet been determined.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- OPERATOR CERTIFICATION PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
Education/Information/T.A.:	See information provided under Public Water Supply Program.		
Comp. Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds:	Operators must be certified to be in responsible charge of a public water or wastewater system. Operators must pass an examination and meet minimum experience requirements in order to become fully certified. Continuing education credits are required on a biennial basis.	Program Staff	1400+
Monitoring/Inspections: Not authorized			
Administrative Notices/Orders: * Informal Notice * Disciplinary Action * Administrative Order	Informal notices of violations are routinely used when PWS owners do not employ a fully certified operator.	Program Staff	10
	DEQ may reprimand a certified operator for incompetence or gross negligence.	Program Staff	0
	Administrative orders may be used when the owner of a community public water system does not employ a fully certified operator.	Division Administrator	0
Admin. Penalties/Sanctions: * Penalties * Sanctions	Penalties may be used when the owner of a community public water system does not employ a fully certified operator.	Div. Admin.	0.0000
	DEQ may suspend or revoke a certificate for incompetence or gross negligence.	Div. Admin.	

STATE COMPLIANCE/ENFORCEMENT TOOLS -- OPERATOR CERTIFICATION PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
Civil Judicial Action: Not Authorized			
Criminal Judicial Action: Not Authorized			

9. "Violations." The quality of water provided by public water suppliers is significantly better than in 1985. Small suppliers still struggle to meet regulatory requirements, however, and water provided by small suppliers violates standards on a fairly regular basis.

Public Water Supply Program: As noted above, there are many technical violations because of the voluminous, prescriptive new federal rules. Data on formal enforcement actions is reported in the tables above.

Violations detected by self-monitoring (or lack thereof) are listed by rule below:

1. Surface water treatment rule: 613 violations by 216 PWSs.
2. Total coliform rule: 2,141 violations by 1,014 PWSs.
3. Lead and copper rule: 190 violations by 150 PWSs.
4. Phase 2 & phase 5 rules: 9,239 by 216 PWSs.

Complaints received in 1995 that resulted in violations: approximately 5

Subdivisions: There were approximately 10 documented violations of the Sanitation in Subdivisions Act in 1995. The large number of subdivision applications and staff turnover have limited the staff's ability to resolve violations.

Complaints received in 1995 that resulted in violations: approximately 10

Water Treatment Plant Operators: Compliance is good among water suppliers and operators. It is estimated that there are currently only about 10 community public water suppliers without certified operators. Turnover in operator personnel sometimes results in periodic transient noncompliance, but compliance is typically achieved when a new certified operator (or an operator-in-training, with DEQ approval) is hired.

Complaints received in 1995 that resulted in violations: 2

Discovery of Violations. Program staff indicate that data are not readily available. However, they state that it is the responsibility of each public water supply system to report violations to the DEQ. Therefore most Public Water Supply Program violations are a result of self reporting. Most violations in the Subdivision Program are identified through citizen complaints.

<u>Group</u>	<u>Total</u>	<u>Violations Discovered, by method, 1995</u>			<u>Citizen Complaint</u>
		<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	
PWSA:					
Subdivisions:					
Water Treatment Plant Operators:		Refer to information on preceding page			

10. Considerations in Calculating Penalties.

The program's enforcement policy includes a penalty calculation policy based on the benefit of noncompliance model (see also ARM 16.20.801-805). This determines the costs that were avoided by failure to comply with appropriate regulations.

11. Resolution of Noncompliances.

Public Water Supply Program: Virtually every violation results in at least one informal response; usually a monitoring letter. Many informal enforcement efforts are also implemented through phone calls, field visits (technical assistance), training sessions, and through contracted technical assistance. The PWS Program has implemented draft versions of Enforcement Response Guides (ergs) for each rule. Particular attention is given to significant noncompliers (SNCs - an EPA defined status based upon a certain number of violations). The program has also attempted to resolve old back-logged enforcement cases in order to proceed with new noncompliance issues. The program has 9 outstanding administrative orders, and has recently submitted formal enforcement requests for over 100 violations to the Division Enforcement Team. Public notice will be given in the near future for many PWSs that are SNCs before formal action is taken against the supplier.

Subdivisions: The Subdivision Program has also attempted to resolve old back-logged enforcement cases, and has implemented the draft version of an enforcement response guide. The program has had one formal enforcement action request approved in 1995 and one in 1996. As mentioned, the program has limited ability to perform enforcement because of the high number of subdivision applications and a limited review time.

Operator Certification: The program has implemented a draft version of an enforcement response guide. Violations are typically resolved through informal efforts, and through concurrent efforts of the PWS Program when noncompliance issues overlap with the PWS law.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Public Water Supply Program:

Public Water Supply Program: Continued informal and formal efforts will continue as PWS Program and Enforcement Division resources allow. Some SNCs may be referred to the EPA. Also, efforts to negotiate with the EPA to prioritize compliance and enforcement activities will continue

Subdivisions: Formal and informal efforts will continue. The 1996 Legislature may approve additional staff, or the rate of subdivision activity may decline.

Water Treatment Plant Operators: Increased training and education for water treatment plant operators is a priority in this program.

13. Compliance Relationships with Other Agencies.

Oversight. The EPA has the authority to "overfile" on the Montana PWS Program if enforcement actions are not satisfactory to achieve compliance.

Partnerships. The PWS Program may be able to refer some SNCs to the EPA when state resources are limited.

Delegated Authority. No enforcement authority can be delegated to local governments, but many local health departments perform inspections and plan review for the PWS and Subdivision Programs.

Ground Water Program

The Montana Ground Water Pollution Control System Program was established in 1982. The program includes ground water quality standards, a ground water classification system, MGWPCS permits system, and authority to respond to spills which cause ground water contamination. Currently there are 40 ground water discharge permits covering a variety of activities including fly ash land fills, small gold milling operations, animal and dairy waste operations, fuel contaminated soil land farms, and wastewater ponds. Many activities are excluded from obtaining a MGWPCS permit because they are permitted by another regulatory program, such as landfills and mines. The program also responds to complaints or spills involving ground water. About 90 sites are currently under investigation or being cleaned up and at least 150 have been completed. Program staff are also responsible for ground water pollution prevention activities related to public water supply wellhead protection, local water quality districts, pesticides in ground water and nonpoint pollution prevention.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Ground Water Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Article II, section 3** - "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . ."
- **75-5-101, MCA. Water Quality Act** policy statement. "It is the public policy of this state to conserve water by protecting , maintaining, and improving the quality and potability of water."
- **7-13-4501, MCA. Local Water Quality Districts.** "The purpose of this part is to provide for the creation of local water quality districts to protect, preserve and improve the quality of surface water and ground water."
- **80-15-101, MCA. Agricultural Chemical Ground Water Protection Act** policy summary: 1) protect ground water and environment from impairment due to pesticide, 2) allow for proper use of pesticides, 3) provide for proper management of pesticides, and 4) provide for education and training.

Supplemental and/or related state authorities:

- None

Related federal authorities:

- None

Specific enforcement authority:

- 75-5-601, MCA et seq
- ARM 16.20.1001. Ground water pollution control system regulations contain ground water classifications and standards, permitting requirements and authority to require reporting of spills and remediation.
- ARM 16.20.501. Local water quality district regulations describe program requirements and procedures for granting enforcement authority.
- ARM 4.11.101. Agricultural Chemical Ground Water Protection Act rules describe triggers for specific management plans, and enforcement and penalty authority for the Montana Department of Agriculture.

Primacy and Jurisdictional Agreements:

- None

2. Program Goals. Based upon the above-referenced guidance and the Montana Ground Water Plan, the Ground Water Program has identified the following policy and program goals:

1. Policy Statement. It is the policy and practice of the State of Montana to protect and improve the quality and quantity of Montana's ground water resources. The Montana Ground Water Plan sets forth actions for improved public and private management of Montana's ground water which will sustain current and future uses.

2. Protection Goal. To protect and improve the quality and quantity of Montana's ground water resources to sustain current and future uses.

3. Education Goal. To engage Montanans of all ages in personal or public action that supports wise ground water use and management.

4. Remediation Goal. To eliminate or reduce harmful impacts to human health and the environment posed by ground water contamination.

3. Program Activities. The Ground Water Program is actually composed of several smaller programs related to ground water pollution prevention and control. Program activities can be generalized as follows: 1) program administration, budgeting and planning, staff supervision, regulatory and legislative work; 2) wellhead protection program implementation; 3) Montana Ground Water Pollution Control System (MGWPCS) permit program, respond to citizen complaints related to ground water and oversee remediation of spill/contaminated sites; 4) pesticides in ground water and nonpoint ground water pollution initiatives; 5) oversight of the local water quality districts program; and 6) development and implementation of the Comprehensive State Ground Water Protection Program (CSGWPP) to coordinate ground water activities. Staffing and funding for these activities are described in more detail below. Enforcement activities are associated primarily with MGWPCS permits, spill/contamination cleanup oversight and local water quality districts.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr²</u>
Administration	91,310	1.5	>10	NA	NA	NA
Wellhead protection	53,712	1.0	2	58	5-15	NA
MGWPCS permits	214,848	4.0 ³	3	40	5-10	
Complaints investigation	--	--		25	15-30	
Spill/contamination sites	--	--		90	15-30	
Pesticides/nonpoint	18,799	0.35	4	5	1	
Local WQ Dist.	16,144	0.3	2	4	1	
CSGWPP	13,429	0.2				

Notes:

1. Does not include 0.2 FTE Division Adm; 0.4 FTE attorney.
2. Refers approximately to last 5 years.
3. Includes 1.0 FTE WQ Spec. in enforcement section

Fees and Charges. Ground Water Program revenues from fees and charges are described below. The fees are authorized by statute but set by the Board of Environmental Review. See ARM 16.20.1604 for a current fee schedule.

<u>Type</u>	<u>Typical Amount</u>	<u>Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:	\$200 - \$2,500 ¹	Not Available	Not Available are used for general program support
Annual renewal fee	\$250 - \$2,500	\$25K - \$30K	
Interest penalty on late fees	15%	Not Available	
Additional MEPA Fees:	None		
Noncompliance Penalties:	Up to \$25,000/day	Not Available	
TOTAL:		\$25K - \$30K	

Notes:

1. These fees vary depending on the specific discharge source. See ARM 16.20.1604 for more information.

4. Regulated Communities. Requirements of the Water Quality Act apply to any person that may impact the quality of surface water or ground water. Anyone who discharges wastes where they will impact water quality is a member of the regulated community. The Ground Water Program manages a MGWPCS permit system to control activities that discharge pollutants to ground water. Many activities such as mining, hazardous or solid waste disposal, domestic sewage disposal, oil and gas drilling, etc., are excluded from MGWPCS permits by statute because they are permitted by another program.

MGWPCS regulations are currently undergoing revisions that will give the DEQ the authority to require MGWPCS permits for public sewage systems that discharge into ground water. The program is unable to process permits for many activities that impact ground water because of limited staff and the large number of activities that discharge pollutants to ground water. Some of these unregulated activities include dozens of animal waste management sites and hundreds of shallow disposal wells. Some shallow disposal wells are regulated by the federal Underground Injection Control (UIC) program. The Ground Water Program hopes to obtain authority and funding from the EPA within the next few years to administer the UIC program in Montana. At the present time, priority is given the largest operations situated in areas where high quality ground water is threatened. Using this approach, five to ten animal waste management/disposal operations are permitted each year.

The program also responds to cases where ground water contamination is present. These cases are either spill sites or locations where contamination is discovered by a site assessment conducted prior to a property sale. Owners of property with contaminated ground water are also included in the regulated community.

5. Philosophical Approach to Compliance.

Ground Water Program staff know that ground water pollution prevention is easier and less expensive than ground water contamination cleanup and the program is always trying to expand its pollution prevention and education activities. A discovery of ground water pollution is typically considered a violation. Necessary response actions include: mitigation of impacts to water users, source elimination or control, and then cleanup. The program's general approach is to work with the responsible party to ensure these actions are accomplished in a timely manner. Program staff provide regulatory guidance and technical assistance to the responsible party to assist them in coming into compliance. Only when a responsible party is repeatedly out of compliance and blatantly recalcitrant does the program consider a formal enforcement action.

6. Compliance Tools Available and Used. A matrix explaining how enforcement tools are used by the Ground Water Program is shown on the following pages. Informal enforcement tools include: phone calls and meetings, notice of violation letters, request for corrective action letters, and permit modifications or revocations. Informal enforcement tools are utilized on a daily basis by program staff to deal with permit violations or to address violations of standards at ground water contamination sites, such as at spill sites. Unfortunately, the lack of an adequate enforcement tracking system does not allow for a quantitative evaluation of informal enforcement actions.

Formal enforcement actions include administrative, civil or criminal orders and penalties. The program has developed a enforcement response guide and ranking system to assist in prioritizing violations for enforcement and to assist in deterring appropriate enforcement response.

7. Incentives for Compliance. Payment of a \$25,000 per day per violation penalty as specified in the Water Quality Act should to be a financial incentive to remain in compliance. Historically, however penalties in these amounts have been rarely assessed. The new enforcement procedures manual describes penalty calculation process. Additionally, the desire to be viewed by the public as a good corporate neighbor is often cited as a reason for a company to remain in compliance.

8. History of Compliance. Again, the lack of an adequate enforcement tracking system does not allow for a quantitative evaluation of historical compliance. Also, many facilities that violate ground water quality standards are permitted by another regulatory program and the DEQ Ground Water Program does not track these violations. For sites that have MGWPCS permits, most are in compliance. One formal enforcement action has been taken against a permitted facility in the past five years. This case was the revocation of the Chicago Mining Co. MGWPCS permit for the Pony Mill.

Most spill sites and ground water contamination sites are in violation of a ground water quality standards. Informal enforcement actions are usually adequate to achieve a voluntary clean up at these sites. Formal enforcement actions (civil complaint with penalties) have been levied against a few sites for major ground water pollution problems. Examples of these sites include the Conoco pipeline leaks near Avon and Garrison. Violation of ground water quality standards has been the basis for several formal enforcement actions. These enforcement actions have been taken against facilities regulated by another program, such as the Pegasus Zortman-Landusky Mines or the Burlington Northern Livingston Rebuild Center.

Generally the number of violations is on the increase because the department is beginning to track them better. However the number of formal enforcement actions had decreased because of lack of staff resources. Ultimately, because ground water remediation is expensive and long-term, many sites remain in violation for numerous years without a reasonable prospect for clean up.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- GROUND WATER PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
Education/Information/T.A.: * Public Education * Information * Technical Assistance/Regulatory Interpretation	<p>No formal ground water education program. Training and materials are provided to other programs, the public and the regulated community by speaking at seminars, training sessions when requested.</p> <p>Guidance documents and information materials are produced as staff determine the need and are able to take the time to produce a product. Example: Animal waste management handbook.</p> <p>Staff are on the constantly on the phone and write letters daily to provide technical assistance and regulatory interpretations to other programs, the public and the regulated community. Technical assistance is also provided during inspections and in inspection reports.</p>	<p>Staff</p> <p>Staff</p> <p>Staff</p>	<p>20</p> <p>3</p> <p>Routine</p>
Comp. Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds: Montana Ground Water Pollution Control System Permits	Permits are required for discharges of pollutants to ground water that are not excluded. Permits contain operation and monitoring requirements. Failure to comply with permit requirements will trigger an informal enforcement action. DEQ has the authority to accept a reclamation bond submitted voluntarily but does not have bonding authority for MGWPCS permits.	Manager/Staff	3

source: Arrigo, 1996

STATE COMPLIANCE/ENFORCEMENT TOOLS -- GROUND WATER PROGRAM			
Tools Authorized	"Trigger" (When Used?)	Authorit y to Comple te	Times Used (95)
Monitoring/Inspections:	Permittees submit self-monitoring data and inspections are conducted to determine compliance and collect samples. If permit violations are detected they are noted in inspection reports and correspondence and trigger an enforcement action.	Manager/ Staff	90 (Approx)
Administrative Notices/Orders: Informal Enforcement Actions: * Phone Calls and Meetings * Notice of Violation Letters * Request for Corrective Action Formal Actions: * Administrative Orders * Permit Modifications and Revocations	As noted in the above information, any variance from the statutes, regulations, or permit conditions, or any ground water pollution, is a violation that will trigger some form of enforcement action. Staff will attempt to work with the violator to ensure compliance. If informal enforcement actions do not succeed in bringing the facility into compliance, formal actions are considered. See Water Quality Division enforcement procedures manual for details.	Staff Manager	Not Available ¹ Admin Orders-25 Permit Revoc's -1
Admin. Penalties/Sanctions: See -- for details ²			0.0000
Civil Judicial Action: See -- for details			0.0000
Criminal Judicial Action: See -- for details			0.0000

Notes:

¹ As noted earlier, the lack of an adequate enforcement tracking system does not allow for a quantitative evaluation of informal enforcement actions.

² The Water Quality Division has adopted an enforcement procedures manual to ensure uniform and consistent enforcement of the water quality laws. Therefore, this information is similar for all formal enforcement actions within the division.

source: Arrigo, 1996

9. "Violations." During CY 95, the Ground Water Program took enforcement actions on 36 violations. Additional information regarding these violations is shown beginning on the next page. In CY 90, the program identified 12 violations. Program staff say that better tracking of complaints, investigations, and monitoring reports is the main reason for the apparent increase in violations in CY 95.

10. Considerations in Calculating Penalties. The program's enforcement policy includes a penalty calculation policy based on the benefit of noncompliance model. This determines the costs that were avoided by failure to comply with appropriate regulations.

11. Resolution of Noncompliances. As stated earlier, most violations are addressed informally through education and technical assistance. However, due to the long term nature of problems associated with ground water contamination, identified violations in the Ground Water Program are difficult to completely resolve. As shown on the next page, nine of the 36 violations identified in CY 95 have been completely resolved through cleanup or other required action if cleanup was not required. Of the 12 violations in CY 90, four have been completely resolved through cleanup.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Ground Water Program:

- Revision of the MGWPCS regulations to correspond to Water Quality Act amendments.
- Development of an MGWPCS permit to control sources of pollution not subject to regulation prior to Water Quality Act amendments. Specifically, permits for public sewage systems that discharge to ground water.
- Development of an underground injection control program (UIC) and submittal to the EPA for authorization and funding. A Montana UIC program is necessary to control the hundreds of shallow injection wells that cause pollution of high quality ground water.

13. Compliance Relationships with Other Agencies.

Oversight. No federal authority for a Ground Water Program is available for delegation. The EPA funds state activities related to ground water under Section 106 of the federal Clean Water Act. Work activities are conducted in accordance with annual State/EPA Agreements. The EPA has "approved" Montana's Wellhead Protection Program but no delegation or funding for that program is available. The DEQ anticipates the EPA will "endorse" its Comprehensive Ground Water Protection Program in 1996, but no delegation or funding is associated with the comprehensive program.

Partnerships. Through development of the Comprehensive Ground Water Protection Program, the DEQ Ground Water Program will work to bring consistency in activities related to ground water, to assist in identifying and filling gaps, and to eliminate duplication.

Delegated Authority. Local water quality districts are allowed under statute to adopt water quality regulations that cover situations or entities not regulated by the water quality act. The Ground Water Program does not delegate any authority to local water quality districts but the program may, on a case-by-case basis, authorize a district to enforce water quality statutes.

1995 Ground Water Violations, by Type and Status						
Month	Violation Discovered	Type of Operator	Desc. of Violation	Penalty Assessed	Status at Year End	Significant Violation?
March		Small Business	Leaking Barrels	None	Active	Unknown ¹
April		CAFO ²	Unpermitted	None	Active	No
July		Well Driller	Discharge w/o Permit	None	Active ⁴	No
Sept		Small Business	Diesel Spill	None	Active ⁵	No
April		City Shop	Disposal Pit	None	Active	No
Jan		City Lagoon	Permit Noncompliance	None	Active	No
Jan		Asphalt Plant	Asphalt Spill	None	Active ⁵	No
Feb		CAFO	Unpermitted Discharge	None	Active	No
Feb		Oil Pipeline	Pipeline Leak	None	Active ⁶	No
August		Rail Machine Shop	Diesel Spill	None	Active ⁵	No
April		City Shop	Shop Drain Contamination	None	Active ⁶	No
June		MDOT ⁷	Leaking UST	None	Active ⁶	No
June		MDOT	Gravel Stock Pile	None	Active	No
June		Maintenance Shop	Hydrocarbon Discharge - Sump	None	Active ⁶	No
June		Oil Well	Crude Oil Spill	None	Active	No
August		Septic Systems	Well Contamination - Fecal Coli.	None	Active ⁸	No
July		Oil Producer	Oil Spill	None	Active ⁶	No
May		Electric Coop	Non-PCB Oil Spill	None	Active	No
October		Small Business	Failure to Submit Monitoring Reports	None	Active	No
June		Trailer Park	Sewage Lagoon Discharge	None	Active	No
October		Small Business	No Permit - Truck Wash Water	None	Active	No
June		City Lagoon	Unpermitted Discharge	None	Active	No
June		Diary Plant CAFO	Unpermitted	None	Inactive ⁹	No
March		Small Business	Gas/Diesel Spill	None	Inactive ¹⁰	No
July		Small Business	LWQD Ordinance Violation - Floor Drain	None	Inactive ¹¹	No
Feb		Transformer Station	Transformer Oil Spill	None	Inactive ¹²	No
Jan		Small Business	PCP Release	None	Inactive ¹¹	No
July		Small Business	Hydrocarbon Discharge - Sump	None	Inactive ¹²	No
April		Oil Refinery	Pipeline Leak	None	Inactive ¹³	No
June		Rail Yard	Derailment Fuel Oil Spill	None	Inactive ¹²	No
June		Ag Facility	Failure to Monitor and Keep Records	None	Inactive ¹²	No
Jan		Ag Facility	Failure to Submit Annual Report	None	Inactive ¹²	No
Jan		Small Business	Diesel Spill	None	Inactive ¹²	No
Sept		Small Business	Diesel Spill	None	Inactive ¹²	No
Jan		Small Business	Unpermitted Truck Washing Facility	None	Inactive ¹²	No
June		CAFO	Offsite Runoff of Animal Waste	None	Inactive ¹²	No

Notes:

- 1 The extent of the soil contamination is being investigated. The significance of the violation will be determined after the investigation is complete.
- 2 Confined Animal Feed Operation.
- 3 Recommend formal enforcement action.
- 4 Local Water Quality District has requested enforcement authority.
- 5 Cleanup ongoing.
- 6 First response cleanup complete, follow up inspections needed.
- 7 Montana Department of Transportation Shop
- 8 Monitoring area wells.
- 9 CAFO requirements incorporated into current MGWPCS permit.
- 10 Small amount of remaining hydrocarbons do not threaten state waters.
- 11 Referred to CECRA.
- 12 Cleanup complete or otherwise resolved.
- 13 Referred to EPA and RCRA

source: Arrigo, 1996.

Discovery of Violations.

<u>Group</u>	<u>Total</u>	<u>Violations Discovered, by method, 1995</u>		<u>Inspection¹</u>	<u>Citizen Complaint</u>
		<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>		
Ground Water Violations	36	4	13	11	8

Notes:

1 Includes inspections by other state or local agencies.

Surface Water

The Water Quality Division operates several programs related to protecting the quality of Montana's surface waters (streams, lakes and wetlands). They include activities related to controlling degradation of "high-quality waters", regulating discharges of pollutants into surface waters, and the many related studies and monitoring necessary to implement the surface water-related provisions of Montana's Water Quality Act and related laws and regulations. (Note: Division programs related to Public Water Supply, Subdivision Review, and Ground Water Protection are covered elsewhere in this summary.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for Water Quality Division activities related to surface water.

Primary constitutional and statutory authorities (see also Appendix B):

- **Montana Constitution, Art. IX, Sec. 1** refers to the responsibility of the state and individuals to maintain and improve a clean and healthful environment for present and future generations.
- **Montana Water Quality Act (MWQA)** (MCA 75-5-101 et seq.) provides for the conservation of water through protecting, maintaining, and improving the quality and potability of water for beneficial uses (public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, etc.).

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Montana Water and Wastewater Operator Certification Act** (MCA 37-42-201) provides for the certification of wastewater treatment plants in order to protect the public health and safety.
- **Montana Wastewater Treatment Revolving Fund Act** (MCA 75-5-11 et seq.)

- **Local Water Quality Districts Act** (MCA) 7-13-4501 provides for the creation of local districts to protect, preserve, and improve the quality of surface water and ground water.

Related federal authorities:

- **Clean Water Act** (PL 92-500, as amended by PL 100-4, February, 1987)

Surface water-related administrative rules:

- ARM 16.18.101-.102; 16.18.201-.209; 16.18.301-.311; 16.20.101-.103; 16.20.501-.506; 16.20.601-.643; 16.20.706-.714; 15.20.801-.805; 16.20.801-.805; 16.20.920-.976; 16.20.1301-.1347; 16.20.1401-.1416; 16.20.1701-.1709; 16.20.1801-.1810

Specific enforcement authority related to surface water:

- MCA 75-5-601 thru 75-5-641
- ARM 16.20.1307, 16.20.1327, 16.20.1329

Primacy and jurisdictional agreements:

- EPA-delegated authority for the MPDES Program

2. Program Goals. Based on the above-referenced guidance, the Water Quality Division has identified the following program goal related to surface water:

1. Maintain and improve the quality of Montana's water to protect public health and the environment.

3. Program Activities. Water Quality Division activities related to surface water consist primarily of the following:

Water Quality Management: monitors surface water quality, coordinates volunteer monitoring, develops biological standards, assesses compliance with water quality standards, identifies sources and causes of pollution, prepares 305(b) report and 303(d) lists, prioritizes waters for TMDL development, coordinates TMDL implementation, and plans and conducts watershed planning.

Nonpoint Source Pollution: identifies streams and lakes whose quality is adversely impacted by nonpoint pollution sources, implements watershed demonstration and education projects, and monitors projects to evaluate benefits to water quality.

Water Pollution Control: investigates alleged violations of Montana water quality laws and undertakes enforcement if appropriate.

Water Discharge Permits: control the quality of wastes discharged into state waters.

Municipal Wastewater Assistance: provides technical and financial assistance to municipalities for design, construction and operation of wastewater treatment systems.

Resources available to and demands on these activities are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Average Years Staff Retained</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Average Acreage/Project</u>	<u>Average # of New Proj./Yr¹</u>
Water Quality Mgmt./ N-P-Source Poll.	\$1,416,900²	11.2	5+	200+ watersh./TMDL projects 800+ impaired segments	NA	5-6
Water Poll. Control	575,000	8.3	8³	unk.	NA	unk.
Water Permits	513,800	9.6	7	0 Auth. to Degrade 400+ MPDES 300+ Stormwater	NA NA³ NA	0-2 65 60
Municipal Waste-water Assistance	731,500	10.3	5	45	NA	12
Misc./Cost-Share	141,600	NA	NA	NA	NA	NA
TOTAL	\$3,378,800	39.4	NA	NA	NA	NA

Notes:

¹ Refers approximately to last 5 years.

² Does not include \$1,541,200 of ear-marked dollars to be passed through to conservation districts for non-point-source-related efforts.

³ If 2 of the existing, long-time staff members are excluded, the average is 3 years.

⁴ Average daily discharges vary from none to over 20 million gallons per day. Seasonal fluctuations may decrease discharges to zero, or increase them to over 80 million gallons per day. Seasonal flow fluctuations in receiving waters may allow discharge of more concentrated materials, while still meeting standards and permit requirements; this would be most pronounced on small streams, with large flow fluctuations.

sources: LFA, 1995; Pilcher 1996.

Fees and Charges. Fees associated with division activities related to surface water are described below. Maximum amounts for permit fees are set in statute; rules have been adopted which set categorical fees within statutory limits.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:			
MPDES¹/Stormwater	varied²	\$40,000	Legislatively-approved Program budgets (e.g. permitting, etc.)³
Degradation Auth. Review	varied²	typically none	(same as above)

Annual Fees:			
MPDES/Stormwater	varied²	497,000	(same as above)
Additional MEPA Fees:	varied	typically none	NA
Noncompliance Penalties:	varied	NR⁴	General Fund
TOTAL:		<u>+\$537,000</u>	

Notes:

- ¹ Fee is also assessed for major amendments to MPDES permits.
- ² Fees are based upon category of wastewater, and amount of discharge. Additional information is in ARM 16.20.1604.
- ³ See 75-5-516 MCA.
- ⁴ Typical annual amount was not reported (NR) by program staff. However, they do note that in the last 20 years, over \$650,000 in civil penalties have been assessed by the courts (collected?) for water quality violations (surface water only, or should only some portion of that be included here?); \$100,000 in agency costs have been recovered (surface water?).

source: Pilcher, 1996; Shewman, 1996.

4. Regulated Communities. Water Quality Division activities related to surface water typically involve three regulated communities: 1) entities whose activities may degrade Montana's "high quality waters"; 2) entities discharging or applying to discharge wastes into any of Montana's streams or lakes via an identifiable discharge point, such as a pipe, ditch, etc. (i.e. "point source" dischargers); and 3) entities whose activities may lead to water quality degradation through "nonpoint source" discharges (i.e. runoff picking up chemicals, excess levels of sediment, or other contaminants). The latter two communities are described below.

Any **point source dischargers** of pollutants to state surface waters for MPDES and stormwater programs. This also includes discharges into the ground or through the ground water which are obviously connected to surface waters or surface streams. This includes cities and towns with wastewater plants that discharge to state waters (which many do), and various industries (e.g. refineries, mines, oil producers, feed lots, power plants, construction activities such as dewatering and hydrostatic testing, meat packers, fish farms, railroad facilities, remediation facilities, air conditioning and heating and cooling discharges, etc.). As of the close of 1995, there were approximately 740 active waste discharge permits (surface, municipal and industrial, stormwater & groundwater discharges) on file with the Division.

Nonpoint source dischargers are those involved in activities that contribute to surface water pollution through increased contaminants in runoff (or percolation through groundwater), including sediments, heat, nutrients, organic wastes, bacteria, pesticides, toxic metals, and altered flow. As of 1994, the most prevalent sources of non-point-source pollution included; agriculture, mining, and forestry.

5. Philosophical Approach to Compliance. The division's top priority is keeping the regulated community in compliance with the water quality statutes and rules. For those who fail to see the benefits of compliance or fail to achieve compliance, formal enforcement may be necessary. The department developed the *Compliance and Enforcement Manual* to ensure responsible and consistent action related to water quality violations.

The approach to nonpoint source pollution compliance is a cooperative one involving education, protection of natural habitat (i.e. wetlands and floodplains), and financial incentives. Effective agricultural, forestry, and other management practices are encouraged by working closely with Conservation Districts on watershed-based projects.

6. Compliance Tools Available and Used. The Water Quality Division's formal inspection and enforcement procedures are documented in the division's *Enforcement and Compliance Manual*, in place since August 1995. The manual identifies guiding principles (policy), procedures, guidelines, and

basic forms, and enables application of uniform enforcement principles, while allowing for appropriate levels of professional judgement in implementation. Upon completion of the manual, it was expected it would need to be reviewed and revised within 6 months. A formal review is currently being set up within the agency, but it cannot be fully modified until final reorganization proposals are determined. Agency staff expect the manual to provide direction for other DEQ programs, but no formal directive has been issued. No date has been set for final review of the manual.

The menu of tools used by the Water Quality Division to achieve their natural resource/environmental mandates related to surface water is shown beginning on the next page. **There are three separate matrices, one for each of the regulated communities described earlier: Degradation of "High-Quality" Waters; General and Point Source Dischargers; and Nonpoint Source Dischargers.**

7. Incentives for Compliance. According to program staff, civil penalties are a strong incentive for compliance with surface water-related rules and regulations. They should establish a level playing field for the entire regulated community by removing any economic advantage that would be associated with a failure to comply. It is department policy to recover civil penalties at least equal to the "economic benefit of noncompliance." The EPA provides a computer model to generate the appropriate figure. Bad press is also a deterrent to violations.

Agency-Generated. Regarding MPDES permittees, if discharges are less than half their permitted limit, annual fees can be reduced by up to 25% per operation. Reductions are pro-rated based on how close they are to half their limit (i.e. a 25% reduction in discharges yields a 12.5% reduction in fees, etc.). Approximately 40 percent of the MPDES permittees achieved the full 25% reduction in 1995. This included some who are able to retain all wastewater, and includes both industry and municipalities. Discounts can be substantial, since some permittees have up to a \$40,000 annual fee.

Industry-Generated. (None noted.)

Other. (None noted.)

FIGURE A -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- DEGRADATION OF "HIGH-QUALITY" WATERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Time s Used ? (95)
DEGRADATION OF HIGH-QUALITY WATERS: Education/Information/T.A.:	Education concerning the nondegradation process is conducted through informal meetings with staff, and responses to telephone inquiries, done on an ad-hoc, time-as-available basis. The last statewide formal training was done in 1995.	staff	NA
Comp. Planning/Withdrawals:	No formal comprehensive planning is done for nondegradation-related activities. (Please see Figures B and C for other DEQ planning activities related to surface water.)	NA	NA
Permits/Certifications/Bonds: "High-Quality Water" Degradation Review Process: - Self-Determination of Non-Significance - Application for Determination of Non-Significance - Application to Degrade: - Preliminary Decision	<p>Any person proposing an activity that may degrade high-quality waters must be exempted from the review process, or generate or receive a determination that the degradation is not significant, or, if the proposal does not qualify for any of the preceding, must obtain an authorization to degrade (see below).</p> <p>A project proponent may use the standards in ARM 16.20.712 and 16.20.713 to determine his/her activity is clearly not significant unless the activity is permitted licensed, or otherwise authorized by the department.</p> <p>If the proposed activity does not fall within the categories identified as "nonsignificant," above, the proponent can request the department to determine whether the proposal would significantly degrade high-quality waters. The department must respond to the application within 60 days.</p> <p>If the above-described process has determined a proposed activity will significantly degrade high-quality waters, the proponent must apply for authorization to degrade.</p> <p>A preliminary decision either authorizing or denying the degradation must be issued within 180 days of receipt of completed application. The time period may be extended on agreement from the applicant, and/or if an EIS is required.</p>	<p>see below</p> <p>applicant</p> <p>Prog. Sup.</p> <p>Applicant</p> <p>staff</p>	<p>NA</p> <p>NT</p> <p>100s</p> <p>0</p> <p>0</p>

FIGURE A -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- DEGRADATION OF "HIGH-QUALITY" WATERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Time s Used ? (95)
DEGRADATION OF HIGH-QUALITY WATERS (CONT.): Permits/Certifications/Bonds (cont.): "High-Quality Water" Degradation Review Process (cont.): - Opportunity for Comment - Authorization to Degrade	<p>Issuance of the Preliminary Decision includes public notification and initiates a 30-day comment period for those who have a real property, economic, or water right interest that may be adversely affected by the proposal. These "interested persons" may also request a hearing on the proposal.</p> <p>Authorization is issued if the department finds that all of the following apply to the proposal: 1) the degradation is necessary because there are no feasible modifications to the proposed project that would result in no degradation, 2) the proposed project will result in important economic or social development and that the benefit of the development exceeds the costs to society of degrading high-quality waters, 3) existing and anticipated use of state waters will be fully protected, and 4) the least degrading water quality protection practices determined by the department to be economically, environmentally and technologically feasible will be fully implemented by the applicant prior to, during, and after the proposed activity. Otherwise, the application will be denied. A final decision must be issued within 60 days of the close of the comment period, and may include a statement of conditions for approval.</p>	<div>staff</div> <div>Director</div>	<div>0.00</div>
Monitoring/Inspections:	Degradation authorizations, if granted, become part of any department permit, license, or authorization. Monitoring or inspections carried out under those authorities will ensure compliance with any authorizations to degrade. (See Figures B and C for additional information.)	NA	NA
Administrative Notices/Orders:	The department is authorized to, and will, pursue violations of degradation authorizations using the same procedures as for any other violation of the Water Quality Act. (Since there were no authorizations issued in 1995, there were no violations of issued authorizations, nor is there any data indicating any 1995 violations of the need for an authorization.) (See Figures B and C for additional information.)	Prog. Sup.	0.00
Admin. Penalties/Sanctions:	The department is authorized to, and will, pursue violations of degradation authorizations using the same procedures as for any other violation of the Water Quality Act. (See Figures B and C for additional information.)	enf. staff	O

FIGURE A -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- DEGRADATION OF "HIGH-QUALITY" WATERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Time s Used ? (95)
DEGRADATION OF HIGH-QUALITY WATERS (CONT.): Civil Judicial Action:	The department is authorized to, and will, pursue violations of degradation authorizations using the same procedures as for any other violation of the Water Quality Act. (See Figures B and C for additional information.)	Legal	O
Criminal Judicial Action:	The department is authorized to, and will, pursue violations of degradation authorizations using the same procedures as for any other violation of the state Water Quality Act. (See Figures B and C for additional information.)	Legal	O

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
GENERAL, AND POINT SOURCE DISCHARGERS: Education/Information/T.A.: Informal (phone, news) Technical Assistance	Done on an ad-hoc, time-as-available, basis. Program staff provide technical assistance by assisting people in staying in compliance and reminding them when they are not in compliance. Technical assistance is provided via seminars, meetings, over the phone, writing letters, inspections. The assistance provided includes interpreting permit requirements, discussion of violations, and providing strategies to return to compliance.	staff	NA
Financial Assistance	The state provides financial assistance to municipalities via State Revolving Fund loans and limited planning grants. Funds must be used for design, construction and/or operation of municipal wastewater treatment plants.	staff	NA
Comprehensive Performance Evaluations	These evaluations are utilized when a review of reporting data indicates physical plant limitations or operational problems.	Prog. Sup.	4
Water Schools	Education program for wastewater treatment plant operators. Courses are offered during the spring and fall of each year.	staff	4
		staff	2
Comp. Planning/Withdrawals: Watershed Planning	As of 1994, watershed planning was being actively pursued in four of Montana's river basins, and the department expected over 30 more efforts to be initiated by 1999.	staff	unk.
305(b) Analysis/Reporting	Every 2 years, the department provides a report to the EPA regarding the status of Montana's water quality. Preparation for this report is based on a comprehensive monitoring and assessment program, including determination of uses supported, causes and sources of pollution, and levels of impairment for over 1,000 waters in Montana.	staff	NA
Special Studies	The department occasionally pursues special studies to assist it with managing Montana's water quality. Examples of special studies include long-term trend analysis, development of biological standards, and lake diagnostic and feasibility studies.	staff	NA
TMDL Development	Determination of Total Maximum Daily Loads (TMDLs) for the Upper and Middle Clark Fork River, and Flathead Lake, is being pursued in partnership with local and tribal groups. Similar efforts are also being pursued for Swan Lake, Deep Creek (Townsend area), and in association with other watershed projects.	staff	unk.

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>GENERAL, AND POINT SOURCE DISCHARGERS (CONT.): Comp. Planning/Withdrawals (cont.): Wetlands-Related Activities</p> <p>Outstanding Resource Water (ORW) Classification:</p> <p>- Petition</p> <p>- Pet. Acceptance/Consideration</p> <p>- Legislative Approval Water "Classification"</p> <p>Water Quality Standards:</p>	<p>Department efforts related to wetlands affect water quality, as well as other resources and uses, and include; coordinating the collection of existing wetland information, developing wetland biological assessment criteria; collecting a baseline database of the least impaired wetlands, sponsoring wetland education programs, and providing an organizational structure that will allow existing wetland programs to better counter threats that exist.</p> <p>Classification of surface waters as ORWs prohibits the state from granting an authorization to degrade. This prohibition does not apply to activities identified as "nonsignificant" or activities that are exempted from the nondegradation review process. (see Figure A, above, for discussion of "degradation".) Classifications must be approved both by the Board of Environmental Review (BER) and the legislature.</p> <p>A person may petition the BER to classify waters as ORWs. The board will reject a petition unless it contains sufficient credible information for the board to review. If the board rejects the petition, it will specify its reasons for rejection and any deficiencies in the petition.</p> <p>The BER will consider the following in determining whether to classify a water body as an ORW: 1) Wild and Scenic River status, 2) presence of threatened or endangered species, 3) an outstanding recreational fishery, 4) sole source of domestic water supply, 5) other factors indicating outstanding environmental or economic factors. If the petition is accepted, and classification may cause significant environmental, social, or economic impacts, the board will require an EIS be prepared.</p> <p>Any board approval of a ORW classification must also be approved by the legislature.</p> <p>A system of classifying surface waters as to what actual and anticipated uses they did and could support upon initiation of the classification system in 1955.</p> <p>These provide quantitative water quality parameters that indicate the ability of the water body to support uses; they are typically expressed by "class" (described above). The EPA requires review (and update where necessary) of water quality standards every three years. Montana has been in a process of continual updates over the last few years.</p>	<p>staff</p> <p>see below</p> <p>petitioner</p> <p>board legislature</p> <p>NA</p> <p>NA</p>	<p>NA</p> <p>NA</p> <p>0</p> <p>0 0</p> <p>NA</p> <p>NA</p>

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>GENERAL, AND POINT SOURCE DISCHARGERS (CONT.): Permits/Certifications/Bonds: General Permit (to Discharge):</p> <ul style="list-style-type: none"> - Application - Authorization - Denial <p>Containment Requirements:</p> <p>Stormwater Permit:</p> <ul style="list-style-type: none"> - Application - Approval - Renewal <p>Wastewater Operator Certification</p>	<p>Certain specified categories of discharge (see ARM 16.20.1317) may be authorized by a summary procedure under a general permit authorization. Must be submitted on DEQ forms. Used in cases where discharges and controls are repetitious. After general permit issued, individual authorizations are provided by letter. General permits may be denied for reasons listed in ARM 16.20.1317(4). Leaching pads, tailing ponds, or water-, waste-, or product-holding facilities must be designed, constructed, operated, and maintained to prevent discharge, seepage, drainage, infiltration, or flow which may result in the pollution of state waters (also applies to ground water). This requires approval from the Water Quality Division, and may occur in conjunction with a MPDES permit process, a ground water permit, or a mine reclamation permit. Required for industrial runoff discharges falling within one of 11 listed categories in federal regulations (40 CFR 122.26(b)). Application is required on DEQ forms. Authorizations are granted by letter under one of three DEQ general stormwater permits. Renewal is required approximately every 5 years. (No information provided by program staff.)</p>	<p>see below</p> <p>applicant</p> <p>Prog. Sup.</p> <p>Prog. Sup.</p> <p>Prog. Sup.</p> <p>see below</p> <p>applicant</p> <p>Prog. Sup.</p> <p>Prog. Sup.</p> <p>Staff</p>	<p>NA</p> <p>±50</p> <p>±50</p> <p>1</p> <p>unk.</p> <p>NA</p> <p>±60</p> <p>±60</p> <p>±20</p> <p>1400</p>

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Permits/Certifications/Bonds (cont.): MPDES Permit:</p> <ul style="list-style-type: none"> - Initial Determination - Opportunity for Public Hearing - Permit Approval - Permit Denial - Opportunity for Appeal - Permit Revision/Amendments - Permit Renewal <p>MEPA:</p> <ul style="list-style-type: none"> - Preparation of EAs - Preparation of EISs <p>Minimum Treatment Requirement</p>	<p>A MPDES permit is required to construct, modify, or operate a disposal system, or to construct or use any outlet for discharge of sewage, industrial or other wastes into state surface water. ("Other Wastes" are defined at 75-5-103(15) MCA.) Exemptions to this requirement include: 1) dischargers of natural ground water that meets water quality standards, 2) holders of a National Pollutant Discharge Permit (NPDES) or a federal Refuse Act permit, 3) persons proposing land application of wastes where the wastes will not return to state waters. Applications for a MPDES permit must be received 180 days prior to the desired initiation of the discharge. Permits contain requirements for minimum treatment levels (per federal guidelines), reference to state-wide water quality standards that must be maintained in the receiving waters, and any specific parameters determined through permit review. Permits are granted if they are in compliance with the Water Quality Act. The permit period is usually 5 years.</p> <p>Upon receipt of a MPDES application, the Department must make a tentative determination whether to issue or deny a permit, then notify the public of their tentative determination. A 30-day comment period follows.</p> <p>The applicant, or any interested person or agency may request a public hearing (held in the geographical area of the proposed discharge) on the proposal.</p> <p>Permits are approved if operation consistent with permit conditions will not result in pollution of any state waters. MPDES permits are issued for a fixed term, not to exceed 5 years. Permits can be denied on the basis of the applicant refusing to correct deficiencies in the application, or if operation under the permit would result in pollution of state waters. If the department denies a permit, the applicant may appeal the decision to the Board of Environmental Review. A hearing must be held within 30 days of the applicant's written request.</p> <p>Permits may be reopened and modified (see ARM 16.20.1327(2) for valid reasons to reopen permit).</p> <p>Application for renewal must be received 180 days prior to the date of permit expiration.</p> <p>The department typically prepares Environmental Assessments (EAs) for all individual MPDES permits and for categorical general permits.</p> <p>Water Quality Division staff participate in Environmental Impact Statements (EISs) for those permits where the EA indicates major environmental impacts.</p> <p>Required by federal guidelines, minimum treatment levels, are national secondary treatment for municipalities (yielding 30 mg/l BOD and 30 mg/l suspended solids for a mechanical treatment plan).</p>	<p>see below</p> <p>staff</p> <p>staff</p> <p>Prog. Sup.</p> <p>unk.</p> <p>Prog. Sup.</p> <p>staff Prog. Sup.</p> <p>staff</p> <p>staff</p> <p>NA</p>	<p></p> <p>53</p> <p>3</p> <p>53</p> <p>unk.</p> <p>0</p> <p>+5 +40</p> <p>53</p> <p>53</p> <p>1</p>

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Monitoring/Inspections: Informal (news, conversations) Review of Permittee Reports: - Self-Monitoring (DMR) Reports Compliance Inspections: - Annual - Every 5 years Complaint-Generated Investigations Permits Compliance System (PCS) National EPA Tracking System ECIS Volunteer Monitoring	Performed continuously on ad hoc, time-as-available, basis.	staff	NA
	Permittee takes samples according to specifications in permit, sends them to a lab, and forwards results to the department, where they are checked for compliance against permit specifications. Reports are typically required monthly, and data is entered in an electronic database as soon as possible.	permittee/ staff	2000+
	Upon presentation of credentials, program staff may enter onto private property to investigate alleged water quality problems. Compliance inspections are not done very frequently, but include a comparison sample taken by program staff, and analyzed for comparison with permittee data.	staff	125
	Done for most major dischargers (i.e. 45 larger cities and industrial sites).	staff	45
	This is a program goal for the remainder of the permittees, based upon the length of the permit period (5 years).	staff	80
	Typically done either for facilities that have permits, and are perceived to be violating, or on facilities that are discharging and do not have a permit. Complaints are validated by program staff within 30 working days of receipt. Validation typically consists of a visit by a person familiar with Water Quality Act requirements.	staff	±35
	Permit requirements are entered into the database. When self-monitoring reports, agency compliance monitoring reports, or valid complaints are received, the information is also entered into the database. At the end of the month, a computer check is run, and violations are flagged. The system will also report violations by type, or location, or type of permittee, etc. Follow-up is addressed in monthly staff meetings.	staff	NA
	All validated violations, except "de minimus" (see below) are entered into a separate database, the Enforcement Compliance Information System (ECIS), which tracks complaints and enforcement action resolutions.	adm.staff	NA
	Volunteer water quality monitoring is not used for compliance/enforcement, but may be used for waterbody assessments, and in data collection regarding water quality conditions and trends, prioritization, and TMDL development. Many Montana citizens are active volunteer water quality monitors through the DEQ, as well as Fish, Wildlife & Parks, in a variety of locations, including the Clark Fork, Bitterroot, Flathead, Kootenai, Upper and Lower Yellowstone, etc.	NA	NA

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>GENERAL, AND NON POINT DISCHARGERS (CONT.): Admin. Incentives/Notices/Orders: Potential for Fee Reduction</p> <p>Note in File</p> <p>"Routine Response" to Violation:</p> <p>- Warning/Compliance Letter</p> <p>Staff Recommendation for Formal Enforcement Response</p> <p>Response to "Emergency" Violations Interim Limits</p> <p>Referral to EPA</p>	<p>If discharges are less than half their permitted limit, annual fees can be reduced by up to 25% per operation. Reductions are pro-rated based on how close they are to the half their limit (i.e. a 25% reduction in discharges yields a 12.5% reduction in fees, etc.). Occurs in the case of "de minimus" violations (i.e. low potential for harm, no similar violations at the site in past 3 years, problem has or will be resolved within 7 days of notification of violation, and there is no compelling policy or administrative reason to pursue further).</p> <p>This occurs for violations that are more serious than "de minimus" (see above), but are not considered to be of imminent risk to public health or the environment. A warning letter is sent to routine response violators. It includes identification of the violation, a specific request for action, establishment of time frames for compliance, and a statement describing the consequences of failure to comply.</p> <p>If program staff believe formal enforcement should be initiated, they fill out a "Case Ranking Form" to assign a numerical value for each violation. The Department then pursues a review process to determine which should be acted upon.</p> <p>Violations with imminent health or environmental risks are treated as emergencies and prioritized for immediate follow up, not left for regularly scheduled meetings. Can be used when a discharger is out of compliance, and it is recognized that compliance will take time. This is used with both municipalities and industry that have had difficulty raising funds to come into compliance.</p> <p>The department shares responsibility with EPA for PWSA and CWA. In certain circumstances (i.e. resource constraints), the Department may choose to request EPA to seek appropriate enforcement response.</p>	<p>staff/auto-matic</p> <p>staff</p> <p>see below</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>Prog. Sup.</p> <p>Director</p>	<p>±280</p> <p>15-20</p> <p>NA</p> <p>160</p> <p>3</p> <p>0</p> <p>±12</p> <p>4</p>

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
GENERAL, AND POINT SOURCE DISCHARGERS (CONT.): Admin. Penalties/Sanctions: Compliance Order Emergency Order Administrative Penalties Clean-Up Order Permit Suspension Permit Revocation	<p>A person violating surface water requirements may be served with a compliance order, specifying the violation, and a timeframe for compliance. Setting the timeframe includes consideration of the seriousness of the violation and any good faith efforts that have been made.</p> <p>If the department finds that a person is committing, or is about to commit, a water quality violation that will cause substantial pollution that will not be immediately remedied, the department may order cessation or moderation of the activity to avoid substantial injury. A hearing before the Board is included.</p> <p>Rules to implement the Administrative penalty authority of the Montana Water Quality Act have been drafted and will be submitted to the Board of Environmental Review this summer.</p> <p>May be issued to order person to clean up any material accidentally or purposefully deposited that may pollute state waters. A penalty may accompany a Cleanup Order.</p> <p>The department may suspend a point-source (MPDES or stormwater) permit if fees have not been paid. The suspension may be lifted within a year, if the holder has paid all outstanding fees, penalties, assessments, and interest.</p> <p>Point-source permits may be terminated for noncompliance, permittee failure to disclose (or permittee misrepresentation of) pertinent information, endangerment of human health or the environment, or altered conditions (e.g. plant closure) requiring permit termination.</p>	Enf. Staff unk. unk.	3 0 4 None None None
Civil Judicial Action: Injunctions, Civil Penalties, Recovery of Investigative Costs	<p>The department is authorized to pursue temporary or permanent injunctions for any violations that would be subject to a Compliance Order. Such actions may be pursued in the County where the violation occurred. The department is also authorized to pursue emergency injunctions upon receipt of evidence that a pollution source (or sources) is endangering the health, welfare, or livelihood of a person. The department may also pursue court action to collect civil penalties. A violator is subject to civil penalties not to exceed \$25,000 per violation, with each day of violation considered a separate violation. The department is authorized to request, and the Court is authorized to assess, a violator for the cost of the investigation or monitoring survey that led to the proof of the violation, as well as any department costs for repairing adverse affects of the discharge.</p>	Legal	3

FIGURE B -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- GENERAL, AND POINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
GENERAL, AND POINT SOURCE DISCHARGERS (CONT.) Criminal Judicial Action: Criminal Penalties	A person convicted of willfully or negligently undertaking an act prohibited under the Water Quality Act (as listed in 75-5-605 MCA, or pretreatment standard), may be fined up to \$25,000 per day and/or imprisoned for up to a year. Subsequent convictions bring a fine of up to \$50,000 per day and/or imprisonment up to 2 years. Any person convicted of knowingly making false statements or falsifying monitoring reports can be fined up to \$25,000 and/or imprisoned for 6 months.	Legal	None

FIGURE C -- STATE COMPLIANCE/ENFORCEMENT TOOLS -- NONPOINT SOURCE DISCHARGERS

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Time s Used ? (95)
NONPOINT SOURCE DISCHARGERS: Education/Information/T.A.: NPS "I/E" Projects	The Information and Education (I/E) portion of the nonpoint source program creates educational materials to encourage management practices to eliminate nonpoint source pollution. The materials are designed to have impact statewide, but also will be used in watershed-specific circumstances. Examples include booklets, workshops, and videos. There are also programs dedicated to youth education.	staff	NA
Comp. Planning/Withdrawals: NPS Watershed Projects	Nonpoint Source (NPS) watershed projects demonstrate the application of Best Management Practices (BMPs) in a medium-sized watershed (8-30 miles in length). Projects have included 80-90% of the landowners within the watershed. The opportunity for a 60% cost-share for the BMPs implemented is offered as a financial incentive to participate. Twelve such projects were undertaken between 1990 and 1994.	staff	3
Permits/Certifications/Bonds: Short-Term Exemption ("3A Exemption") from Water Quality Standards 401/404 Permits	The department may authorize short-term exemptions from certain water quality standards for necessary short-term construction or hydraulic projects which may have short-term water quality impacts. Typically, these projects do not require a MPDES permit, but one may be required if land is disturbed (i.e. >5 acres, or 1 acre close to aquatic site). Program staff are participate in the preparation of permits under the federal Clean Water Act.	Prog. Sup. staff	15 4
Monitoring/Inspections: (None)			
Admin. Incentives/Notices/Orders: Warning/Compliance Letter	(See description in Figure B.)	staff	+15
Admin. Penalties/Sanctions:	(See description in Figure B.)	Enf. Staff	unk.
Civil Judicial Action:	(See description in Figure B.)	Legal	unk.
Criminal Judicial Action:	(See description in Figure B.)	Legal	unk.

sources: DHES, 1994; EQC, 1995; Pilcher, 1996; Shewman, 1996; Horpestad, 1996; Ryan, 1996; Bahls, 1996.

8. History of Compliance. Trends in compliance with surface water-related rules and requirements are described below, by category.

According to program staff, compliance with **nondegradation** requirements is fair; attempts at compliance are being made. The real estate community has expressed the opinion that related requirements are burdensome. There have been no applications for Authorizations to Degrade under the current law (a few were granted prior to recent legislative changes), so trends in compliance with Authorizations to Degrade cannot be assessed.

Compliance with **general surface water regulations and point source discharge** requirements is also fair. As shown below, there appears to be a slight downward trend in the number of MPDES permittees with effluent violations.

MPDES Permits with Effluent Violations, by Year and Ownership

<u>Year</u>	<u>Public Facilities</u>	<u>Private Facilities</u>	<u>Total Sites with Violations</u>	<u>Total Permitted Sites</u>
1990	64	17	81	400*
1991	61	18	79	
1992	55	18	73	
1993	59	20	79	
1994	56	21	77	
1995	47	19	66	

* This figure has remained constant, +/- 10, for the past five years.

source: Shewman, 1996.

The Stormwater Program is only three years old, so compliance figures are not very useful in assessing trends. Program staff estimate that about 20% of the permitted facilities violate the regulations in a year. They also note that the situation has greatly improved, due to better understanding and compliance by those affected, especially related to highway facilities.

9. "Violations." When informal enforcement actions fail to achieve compliance, individual professional staff will initiate formal enforcement. Using the program's *Enforcement Response Guide*, these individuals will determine a recommended enforcement response. The guide contains a series of charts which match categories of violations, frequencies of violations, and seriousness of violations to a range of recommended enforcement responses.

On a monthly basis, each technical program holds a meeting to discuss enforcement requests with the program manager. For any violations determined to require formal enforcement action, the program will prepare a Case Ranking Form to assign a numerical value for each violation. After comparison of numeric values for all violations, the program will identify the violations to be referred to the Division Review Team for further consideration.

Once a month, representatives of each program review cases recommended for formal enforcement, and recommend any formal enforcement action (i.e. Administrative Order, judicial action). Any recommendations that are denied by the director can be resubmitted, but staff must continue to try to resolve the violation through informal enforcement activities.

As noted in the "tools" matrix, operators may be temporarily out of compliance, but, generally, if they correct a violation within 7 days of notification, no further action is pursued. For more serious violations, or if a pattern of noncompliance develops, more escalated enforcement is undertaken. The division incorporates EPA's definitions of "significance" into its program, including "trigger level" exceedences of specific water quality parameters, and repeat violations. The division has three categories of violations, as described below:

De Minimus - a violation that is discovered through 3rd-party complaint, and 1) has low potential for harm to human health and the environment, 2) occurs at a facility or location where there is no history of the same or similar violations during the previous three years, 3) either was corrected within seven days from the date the violation occurred or the responsible party has agreed in writing to correct the violation within seven days after being notified, and 4) there is no compelling policy reason (such as program integrity) to pursue further enforcement action.

Emergency/Imminent Health or Environmental Risk - is a violation that has an immediate and serious potential for harm to human health or the environment and requires an immediate response.

Routine Response - is a violation that are neither of the above.

During a typical year, the Water Quality Division issues approximately 325 letters of violation: about 150 are for general water quality violations, about 160 are related to point-source discharges (100 for MPDES violations and about 60 related to stormwater), and about 15 are related to nonpoint source discharges. Of the total letters of violation noted above, about 20 are raised to the level of formal enforcement (i.e. go beyond the letter and informal negotiation phase).

Regarding MPDES permits, smaller municipalities and industries tend to violate more often than the larger ones. Larger ones, if expanding, run into problems when they start to reach their limits, unless they upgrade. Larger dischargers also typically have more resources to devote to compliance than do smaller dischargers.

Information on 1995 Water Quality Division violations (related to surface water) is shown below.

1995 Surface Water Violations, by Type and Status

Pending in '95:

The Water Quality Division has a backlog of about 115 enforcement requests that it is working through. Of those, 60%, or about 70 of them, relate to the programs covered in this section of the program summary. Others related to drinking water or sanitation in subdivisions, which are covered in other areas of this report.

Last June, the division adopted Temporary Policy Guidance for the Management of the Formal Enforcement Case Backlog (Robinson, 1995). This policy established criteria under which the Department is willing to forego further formal enforcement action. This applies only to those situations where the violator is now back in compliance with all regulations. It requires a closure letter be sent to the responsible party informing them of the past violation and of the department's intent to close the file as long as compliance continues. Any ongoing violations will be considered in accordance with the Compliance and Enforcement Manual.

Issued in '95:

The preceding matrices provide counts of the number of times specific informal or formal enforcement actions were taken in 1995. A high number of violations, a short study timeframe, and limitations to accessing information, combined to prohibit (at this time) the level of detail on surface water-related violations that is provided for violations in other programs. If there is significant interest from reviewers, and cooperation from program staff, additional information can be provided at a later date. Program staff,

however, were able to provide a list of the formal enforcement actions pursued in 1995. Those related to surface water are listed below.

1995 Surface Water Formal Enforcement Actions, By Type and Status

<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u> ¹
Placer Miner	Numerous violations	No	Enjoined	
Timber Company	Water Qual. Stds. Violation	\$3,000	resolved	
Timber Company	Water Qual. Stds. Violation	\$7,000	resolved	
Food Processor	Discharge of Untreated Waste	\$20,000	resolved	
City	Alleged bypass into river	\$75,000 ²	pending	
Agency/Association	Excessive Sediment Disch.	No ³	resolved	

Notes:

- ¹ This program does not use formal significance criteria for penalty evaluation. However, only serious violations receive formal enforcement authority.
- ² Consent decree included not only the penalty, but \$250,000 in "supplemental environmental projects" (i.e. community service investments).
- ³ The consent decree required corrective action and a commitment to implement a number of water quality enhancement and compliance measures at an estimated cost of several hundred thousand dollars.

source: Pilcher, 1996.

Discovery of Violations. Most general, surface water-related violations of the Water Quality Act are discovered through citizen (third-party) complaints. Most surface water violations related to MPDES permits are discovered through review of permittee reports. Permittees typically also self-report such violations. For stormwater, most violations are found through complaints or compliance inspections, since the permits do not contain numerical effluent limitations. Non-point violations are typically found through citizen complaint.

<u>Group</u>	<u>Total</u>	<u>Violations Discovered, by method, 1995</u>			<u>Citizen Complaint</u>
		<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	
General	unk.	unk.	unk.	unk.	unk.
PS Dischargers:					
MPDES	116	66	¹	35	15
Stormwater	72	12	¹	30	30
NPS Dischargers	unk.	unk.	unk.	unk.	unk.

Notes:

- ¹ Most permittees who have a violation evident in their monitoring reports also self-report these violations, and often discuss methods to avoid similar problems in the future.

source: Pilcher, 1996; Shewman, 1996.

Program staff note that much of their current enforcement priorities are driven by third-party complaints, and provided the following summary of 1995 complaints and their status:

1995 Summary of Citizen Complaints Related to Water Quality

Total Number Received	189
Number not valid or insufficient evidence to validate	11
Number transferred to other agencies	14
Number referred to Division Programs, by program:	
Ground water	29
Stormwater	10
MPDES Permits	9
Technical Studies	6
Safe Drinking Water	8
Ecosystems Management	20
Subdivisions	3
 Number pending further review at year end	 79

source: Pilcher, 1996.

10. Considerations in Calculating Penalties. The Water Quality Division informs all (except "de minimus") violators of the maximum daily penalties they could be assessed. The Montana Water Quality Act allows the DEQ to seek a civil penalty not to exceed \$25,000. Each day of violation constitutes a separate violation.

The division's *Compliance and Enforcement Manual* includes the EPA's approach to calculating penalties under "settlement" conditions; penalties will only be calculated if the department is seeking formal enforcement action. If formal action is to be pursued, then, penalties are calculated based upon the following formula:

$$\text{Penalty} = \text{Economic Benefit} + \text{Gravity} \pm \text{Gravity Adjustment Factors} - \text{Litigation Considerations} - \text{Ability to Pay} - \text{Supplemental Environmental Projects}$$

Terms included in the formula are described as follows:

- (+) **Economic Benefit** - which uses the EPA's "BEN" model to calculate the amount required to put the violator in the same financial position as they would be if they had complied on time.
- (+) **Gravity** - which uses a "points" approach to quantify the seriousness of the violation upon, and calculated for each month of violation.
- (+/-) **Adjustment Factors** - which allows the "seriousness" assessment described above to be adjusted for small facilities, quick correction, or bad faith/excess delays.
- (-) **Litigation Considerations** - adjustments made to the requested penalty based upon the potential strength of the case in the eyes of a court.
- (-) **Ability to Pay** - based upon the violator demonstrating inability to pay.

- (-) **Supplemental Environmental Projects** - these are basically "community service" projects that can be approved in lieu of monetary payments.

The EPA policy provides examples and worksheets to calculate settlement penalties.

11. Resolution of Noncompliances. Program staff do not have any easily retrievable data related to trends in the number and method of resolution of noncompliances over time. From a qualitative standpoint, however, program staff feel that resolution of general water quality violations, MPDES and stormwater permit violations, and resolution of nonpoint source violations is relatively good. However, program staff also feel that the timeliness and responsiveness of division enforcement actions should be improved overall. Program staff hope that the addition of newly authorized staff and the full implementation of the division's enforcement manual will allow a more effective and efficient enforcement program.

12. Current Compliance Priorities. the Water Quality Division has identified the following priorities related to surface water regulation in Montana:

- Full staffing of the Enforcement Section;
- Timely investigation of "third party" complaints;
- Timely and effective formal enforcement response in accordance with the Compliance and Enforcement manual.

13. Compliance Relationships with Other Agencies.

Oversight. The U.S. Environmental Protection Agency delegated Clean Water Act authority to the state of Montana in 1974.

Under the federal Clean Water Act, a person who wishes to discharge waste materials from a point source into waters of the United States must obtain a National Pollutant Discharge Elimination System (NPDES) permit. While the U.S. EPA delegated wastewater discharge permitting authority to the state in 1974, a controversy remains over who may issue discharge permits for facilities located on lands owned by nontribal members within reservations. Until this matter is resolved, both the DEQ and EPA are issuing permits for these facilities

Partnerships. Some individual permittees provide funds for department analysis of specific conditions or areas. For the 1996-97 biennium, ARCO will provide approximately \$25,000 for Clark Fork River water quality analyses. The results will be used to judge the effectiveness of cleanup efforts in the Clark Fork Basin.

Delegated Authority. Currently, three local water quality districts have been established, covering Lewis and Clark County (Helena area), Missoula County, and Butte. Gallatin County is currently considering the creation of a local water quality district. The DEQ has a good working association with existing local water quality districts. They are able to address local issues that the DEQ could not address.

Also, included in the Water Quality Division funding is sufficient authority to contract over \$650,000 each fiscal year with nonprofit entities for water quality management activities. At least 60% of this annual amount must be contracted to conservation districts. No more than 10% of this annual amount may be spent on studies.